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## **THE ARYA SAMAJIST MARRIAGES VALIDATION ACT, 1999.**

**Act No. III of 1999.**

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## **THE JAMMU AND KASHMIR ARYA SAMAJIST MARRIA- GES VALIDATON ACT 1999.**

**Act No. III of 1999.**

*(Received the assent of His Highness the Maharaja  
Bahadur on 17th April 1942/5th Baisakh 1999 and published  
in Government Gazette dated 22nd Jeth 1998/4th June 1942.*

### **An Act to recognise and remove doubt as to the validi- ty of marriages current among Arya Samajists**

WHEREAS it is expedient to recognise and place beyond  
doubt the validity of marriages between Arya Samajists ;

It is hereby enacted as follows ;

1. (1) This Act may be called the Jammu and Kashmir  
Short title and extent. Arya Samajist Marriages Validation Act,  
1999.

(2) It shall extend to the whole of the Jammu and Kash-  
mir State and shall also apply to all subjects of His Highness  
the Maharaja Bahadur outside the State wherever they may  
be.

2. Notwithstanding any provision of Hindu Law, custom  
or usage to the contrary no marriage contracted, whether  
before or after the commencement of this Act, between two  
persons being at the time of the marriage Arya Samajists  
shall be invalid or shall be deemed ever to have been  
invalid, by reason only of the fact that the parties at any  
time belonged to different casts or different sub-casts of  
Hindus or that either or both of the parties at any time  
before the marriage professed a religion other than Hinduism



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## THE JAMMU AND KASHMIR FACTORIES ACT 1999.

### Act No VII of 1999.

*(Received the assent of His Highness the Maharaja Bahadur on 28th May 1942/15th Jeth 1999 and published in the Government Gazette dated 15th Sawan, 1999.)*

### An Act to make provision for regulating labour in Factories.

WHEREAS it is expedient to make the provision for regulating labour in the factories ; It is hereby enacted as follows :—

Preamble.

#### I. PRELIMINARY.

1. (a) This Act may be cited as the Jammu and Kashmir  
Short title extent and enforcement. Factories Act, 1999.

(b) It shall extend to the whole of the State and shall come into force on such date as the Government may fix by notification published in the Government Gazette.

2. In this Act, unless there is anything repugnant in the subject or context :—

Definitions.

- (a) "adolescent" means a person who has completed his fifteenth but has not completed his seventeenth year ;  
(b) "adult" means a person who has completed his seventeenth year ;



(c) "child" means a person who has not completed his fifteenth year ;

(d) "day" means a period of twenty-four-hours beginning at midnight,

(e) "factory" means any premises including the precincts thereof whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on ;

(f) "machinery" includes all plant whereby power is generated, transformed, transmitted, or applied ;

(g) "manufacturing process" means any process

(i) for making, altering, repairing, ornamenting finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal or

(ii) for pumping oil, water or sewage or

(iii) for generating, transforming or transmitting power.

(h) "occupier" of a factory means the person who has ultimate control over the affairs of the factory : provided that where the affairs of a a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory ;

(i) "power" means electrical energy and any other form of energy which is mechanically transmitted and is not generated by human or animal agency ;

(j) "prescribed" means prescribed by rules made under this Act ;

(k) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of sets is called "relay" and the period or periods for which it works is called a "shift".

(l) "week" means a period of seven days beginning at midnight on Saturday night ;

(m) "worker" means a person employed whether for wages or not, in any manufacturing process or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on ;

**3.** References to time of day in this Act are references to Indian Standard time, which is five and a half hours ahead of Greenwich Mean

Reference to time of  
day.  
Time.



4. (1) For the purposes of this Act, a factory which is exclusively engaged in one or more of the manufacturing processes which cannot be carried on except during particular seasons or at times dependant on the irregular action of natural forces, is a seasonal factory.

Seasonal Factories.

Provided that the Government may, by notification in the Government Gazette, declare any such factory in which manufacturing processes are ordinarily carried on for more than one hundred and eighty working days in a year not to be a seasonal factory for purposes of this Act.

(2) The Government may, by notification in the Government Gazette declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in a year to be a seasonal factory for the purposes of this Act.

4-A. The Government may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

Powers to declare departments to be separate factories.

5. Where the Government are satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty or is not likely to be twenty or more on any day during the ensuing twelve months they may, by order in writing, exempt such factory from the operation of this Act ;

Power to exempt on a change in the factory.

Provided that any exemption so granted shall cease to have effect on and after any day on which twenty or more workers work in the factory.

5-A (1) Notwithstanding anything contained in clause (e) of section 2, the Government may, by notification in the Government Gazette, declare any place wherein manufacturing process is carried on whether with or without the aid of power, and wherein on anyone day of the twelve months preceding the notification, ten or more workers were employed, to be a factory for all or any of the purposes of this Act.

Powers to declare places to be factories.

(2) A notification under sub-section (1) may be made in respect of any specified place or class of places.

(3) A notification under sub-section (1) shall cease to have effect in respect of any place after the lapse of twelve months during which not more than nine workers were employed there in on any day.



6. In any case of public emergency the Government may, by notification in the Government Gazette, exempt any factory from any or all of the provisions of this Act for such period as they may think fit.

7. Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season the occupier shall send to the

Notice to Inspector  
before commencement  
of work.

Inspector a written notice containing

(a) the name of the factory and its situation,  
(b) the address to which communications relating to the factory should be sent,

(c) the nature of the manufacturing processes to be carried on in the factory,

(d) the nature and the amount of the power to be used, and

(e) the name of the person who shall be the manager of the factory for the purposes of this Act.

(ii) Whenever another person is appointed as manager the occupier shall send to the inspector a written notice of the change within seven days from the date of which the new manager assumes charge.

(iii) During any period for which no person has been designated as manager of a factory under this section, or during which the person designated does not manage the factory, any person found acting as manager or, if no such person is found, the occupier himself shall be deemed to be the manager of the factory for the purposes of this Act.

#### THE INSPECTING STAFF.

8. (i) The Government may by notification in the Government Gazette appoint such persons as they think fit to be Inspectors for the purposes of this Act within such local limits as they may assign to them respectively.

Inspectors.

(ii) The Government may by notification as aforesaid appoint any person to be the Chief Inspector who shall in addition to the powers conferred on a chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(iii) No person shall be appointed to be an Inspector under sub-section (i) or a Chief Inspector under sub-section (ii) or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested



in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(iv) Every District Magistrate and every sub-Divisional Magistrate shall be Inspectors within their respective jurisdictions.

(v) The Government may also, by notification as aforesaid, appoint such public officers as they think fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as they may assign to them respectively.

(vi) In any area where there are more inspectors than one, the Government may by notification as aforesaid, declare the powers which such inspectors shall respectively exercise, and the Inspector to whom the prescribed notices are to be sent.

(vii) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the Ranbir Penal Code and shall be officially subordinate to such authority as the Government may specify in this behalf.

**9.** Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,

Powers of Inspectors.

(a) enter, with such assistants (if any), being persons in the service of the Government or of any municipal or other public authority, as he thinks fit, any place which is, or which he has reason to believe to be used as a factory ;

(b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act ; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act :

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

**10.** The Government may appoint such registered medical practitioners as they think fit to be Certifying Surgeons for the purposes of this Act within such local limits as they may assign to them respectively.

Certifying Surgeons.

*Explanation.*—In this section a registered medical practitioner means any person registered under the Jammu and Kashmir Medical Registration Act 1998.



## III.—HEALTH AND SAFETY.

**11.** Every factory shall be kept clean and free from effluva arising from any drain, privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed, and these methods may include lime-washing, or colour washing varnishing, painting, disinfecting and deodorizing.

Cleanliness.

**12:** (1) Every factory shall be ventilated in accordance with such standards and by such methods as may be prescribed.

Ventilation.

(2) Where gas, dust or other impurity is generated in the course of work, adequate measures shall be taken to prevent injury to the health of workers.

(3) If it appears to the Inspector that in any factory gas, dust or other impurities generated in the course of work is being inhaled by the workers to an injurious extent, and that such generation or inhalation could be prevented by the use of mechanical or other devices, he may serve on the manager of the factory an order in writing, directing that mechanical or other devices for preventing such generation or inhalation shall be provided before a specified date, and shall thereafter be maintained in good order and used throughout working hours.

(4) The Government may make rules for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities, which may be injurious to workers and specifying the nature of such devices.

**13.** In order that no room in a factory shall be crowded during working hours to a dangerous extent or to an extent which may be injurious to the health of the workers, the proportion which the number of cubic feet of space in a room and the number of superficial feet of its floor area bears to the number of workers working at any time therein shall not be less than such standards as may be prescribed either generally or for the particular class of work carried on in the room.

Overcrowding.

**14.** (1) A factory shall be sufficiently lighted during all working hours.

Lighting.

(2) If it appears to the Inspector that any factory is not sufficiently lighted, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.



(3) The Government may make rules requiring that all factories of specified classes shall be lighted in accordance with prescribed standards.

**15.** (1) In every factory a sufficient supply of water fit for drinking shall be provided for the workers at suitable places.

Water.

(2) The supply required by sub-section (1) shall comply with such standards as may be prescribed.

(3) In every factory in which any process involving contact by the workers with injurious or obnoxious substances is carried on, a sufficient supply of water suitable for washing shall be provided for the use of workers, at suitable places and with facilities for its use, according to such standards as may be prescribed.

**16.** For every factory sufficient latrines and urinals according to the prescribed standards, shall be provided, for male workers and for female workers separately, of suitable patterns and at convenient places as prescribed, and shall be kept in a clean and sanitary condition during all working hours.

Latrines and Urinals.

**17.** In every factory such precautions against fire shall be taken as may be prescribed.

Precautions against fire.

**18.** (1) Every factory shall be provided with such means of escape in case of fire as can reasonably be required in the circumstances of each factory.

Means of escape.

(2) In every factory the doors of each room in which more than twenty persons are employed shall except in the case of sliding doors be constructed so as to open out-wards, or, where the door is between the two rooms, in the direction of nearest exit from the building and no such door shall be locked or obstructed while any work is being carried on in the room.

(3) If it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(4) The means of escape shall not be obstructed while any work is being carried on in the factory.

**19.** (1) In every factory the following shall be kept adequately fenced, namely :—

Fencing.

(a) every exposed moving part of a prime mover and every flywheel directly connected to a prime mover ;



(b) every hoist or lift, hoist-well or lift-well and every trap door or similar opening near which any person may have to work or pass; and

(c) every part of the machinery which the Government may prescribe.

(2) If it appears to the Inspector that any other part of the machinery in a factory is dangerous if not adequately fenced, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) All fencing required by or under this section or under sub-section (1) of section 21 shall be maintained in an efficient state at all times when the workers have access to the parts required to be fenced except where they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or altering the gearing or arrangements of the machinery.

(4) Such further provisions as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery in a factory.

**20.** If it appears to the Inspector that any building or part of a building or any other part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory an order in writing requiring him before a specified date :—

Power to require specifications of defective parts or tests of stability.

(a) to furnish such drawings, specifications, and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality of any specified parts and to inform the Inspector of the results thereof.

**21.** (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery, or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

Safety of buildings and machinery.

(2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways,



machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

**22.** (1) No woman or child shall be allowed to clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed and moving parts of any machinery which is in motion under power.

(2) The Government may, by notification in the Government Gazette, prohibit, in any specified factory or class of factories the cleaning or oiling by any person of specified parts of machinery when these parts are in motion under power.

**23.** (1) The Government may make rules prohibiting the admission to any specified class of factories, or to specified parts thereof, of children who cannot be lawfully employed therein.

(1) If it appears to the Inspector that the presence in any factory or part of factory of children who cannot be lawfully employed therein may be dangerous to them or injurious to their health, he may serve on the manager of the factory an order in writing directing him to prevent the admission of such children to the factory or any part of it.

**24.** Where in any factory an accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work in the factory during the forty-eight hours after the accident occurred, or which is of any nature which may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities and in such form and within such time, as may be prescribed.

**25.** (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Chapter or the occupier of the factory, may, within thirty days of the service of the order appeal against it to the Government or to such authority as the Government may appoint in this behalf, and the Government or appointed authority may, subject to rules made in this behalf, confirm, modify or reverse the order.

(2) The appellate authority may, and if so required in the petition or appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate



authority and the other by such body representing the industry concerned as the Government may prescribe in this behalf :

Provided that if no assessor is appointed by such body or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

(3) Except in the case of an appeal against an order under sub-section (2) of section 21 or sub-section (2) of section 23 the appellate authority may suspend the order appealed against pending the decision of the appeal, subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case.

Power of Government  
to make rules to supple-  
ment this Chapter.

**26.** The Government may make rules :—

(a) providing for any matter which, according to any of the provision of this chapter, is or may be prescribed ;

(b) requiring the managers of factories to maintain stores of first aid appliances and provide for their proper custody ;

(c) providing against danger arising from the use of mechanical transport in factories ;

(d) prescribing the manner of the service of orders under this chapter on managers of factories ;

(e) regulating the procedure to be followed in presenting and hearing appeals under section 25 and the appointment and remuneration of assessors ;

(f) regulating the exercise by Inspectors of their powers under this chapter and

(g) providing for any other matter which may be expedient in order to give effect to the provisions of this chapter.

**27.** (1) The Government may make rules requiring that in any specified factory wherein more than one hundred and fifty workers are ordinarily employed an adequate shelter shall be provided for the use of workers during periods of rest, and such rules may prescribe the standards of such shelters.

Power to make rules  
relating to shelters for  
workers during rest.

(2) The Government may also make rules for any class of factories and for the whole or any part of the State requiring that work on a manufacturing process carried on with the aid of power shall not be begun in any building or part of a building erected or taken into use as a factory after the commencement of this Act,

Certificates of stability



until a certificate of stability in the prescribed form, signed by a person possessing the prescribed qualifications, has been sent to the Inspector.

(3) Where the Government is satisfied that any operation in a factory exposes any persons employed upon it to a serious risk of bodily injury poisoning or disease, it may make rules applicable to any factory or class of factories in which the operation is carried on—

(a) specifying the operation and declaring it to be hazardous,

(b) prohibiting or restricting the employment of women or children upon the operation,

(c) providing for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment, and

(d) providing for the protection of all persons employed upon the operation or in the vicinity of the places where it is carried on.

## VI RESTRICTION ON WORKING HOURS OF ADULTS.

**28.** No adult worker shall be allowed to work in the factory for more than fifty-four hours in any week, or where the factory is a seasonal one, for more than sixty hours in any week ;

Provided that an adult worker in a non-seasonal factory engaged in work which for the technical reasons must be continuous throughout the day may work for fifty-six hours in any week.

**29.** (1) No adult worker shall be allowed to work in any factory on a Sunday unless—

Weekly holidays.

(a) he has had or will have a holiday for a whole day one of the three days immediately before or after that Sunday, and

(b) the manager of the factory has, before that Sunday or the substituted day, whichever is earlier—

(i) delivered a notice to the office of Inspector of his intention to require the worker to work on the Sunday and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory ;

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.



(2) Notices given under sub-section (1) may be cancelled by a notice delivered to the office of the Inspector and a notice displayed in the factory not later than the day before the Sunday or the holiday to be cancelled, whichever is earlier.

(3) Where in accordance with the provisions of sub-section (1), any worker works on a Sunday and has had a holiday on one of the three days immediately before it, that Sunday shall for the purpose of calculating his weekly hours of work be included in the preceding week.

**30.** No adult worker shall be allowed to work in a factory for more than ten hours in any day.

Daily hours.

Provided that a male adult worker in a seasonal factory may work for eleven hours in any day.

**31.** The periods of work of adult workers in a factory during each day shall be fixed so that no period shall exceed six hours, and so that no worker shall work for more than six hours before he has had an interval for rest of at least an hour.

Intervals for rest.

**32.** (1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 68 a notice of periods for work for Adults showing clearly the periods within which adult workers may be required to work.

Notice of periods for work for adults and preparation thereof.

(2) The periods shown in the notice required by sub-section (1) shall be fixed before hand in accordance with the following provisions of this section and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 28, 29, 30, and 31.

(3) Where all the adult workers in a factory are required to work within the same periods, the Manager of the Factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work within the same periods, the manager of the factory shall classify them into groups according to the nature of their work.

(5) For each group which is not required to work on a system of shifts, the Manager of the factory shall fix the periods within which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subjected to predetermined periodical changes of shift, the manager of the factory shall fix the period within which each relay of the group may be required to work.



(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the Manager of the factory shall draw up a scheme of shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The Government may make rules prescribing forms for the notice of periods for work for Adults and the manner in which it shall be maintained.

**33.** (1) A copy of the notice referred to in sub-section <sup>Copy of notice of</sup> (1) of section 32 shall be sent in duplicate <sup>periods for work to be</sup> to the Inspector <sup>sent to Inspector.</sup> within fourteen days after the commencement of this Act, or, if the factory begins work after the commencement of this Act before the day on which it begins work.

(2) Any proposed change in the system of work in a factory which will necessitate a change in the notice shall be notified to the Inspector, in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

**34.** (1) The manager of every factory shall maintain a <sup>Register of adult work-</sup> register of adult workers showing <sup>ers.</sup>

- (a) the name of each adult worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and

(e) such other particulars as may be prescribed.

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of and be treated as the Register of Adult Workers in that factory :

Provided further that, where the Government are satisfied that the conditions of work in any factory or class of factories are such that there is no appreciable risk of contravention of the provisions of this chapter in the case of that factory or factories of that class, as the case may be, the Government may, by written order, exempt, on such conditions as they may impose, that factory or all factories of that class, as the case may be, from the provisions of this



section.

(2) The Government may make rules prescribing the form of the Register of Adult Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**35.** No adult worker shall be allowed to work otherwise than in accordance with the notice of periods for work for adults displayed under sub-section (1) of section 32 and the entries made before-hand against his name in the Register of Adult Workers maintained under section 34.

Hours of work to correspond with notice under section 31 and Register under section 33.

**36.** (1) The Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provisions of this Chapter shall not apply to any person so defined.

Power to make rules exempting from restrictions.

(2) The Government may make rules for adult workers providing for the exemption, to such extent and subject to such conditions as may be prescribed in such rules,—

(a) of workers engaged on urgent repairs—from the provisions of sections 28, 29, 30 and 31.—

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory from the provisions of sections 28, 29, 30 and 30 and 31 ;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under section 31 from the provisions of sections 28, 29, 30, and 31 ;

(d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day from the provisions of sections 28, 29, 30 and 31 ;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day from the provisions of section 29 ;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons from the provisions of section 29 ;

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces from the provisions of section 29 and section 31 ;



(h) of workers engaged in engine-room or boiler-houses from the provisions of section 29.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 32 and 33 which the Government may deem to be expedient, subject to such conditions as they may impose.

(4) In making rules under this section the Government shall prescribe the maximum limits for the weekly hours of work for all classes of workers, and any exemption given other than an exemption under clause (a) of sub-section (2), shall be subject to such limits.

(5) Rules made under this section shall remain in force for not more than three years.

**37.** (1) Where the Government are satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, they may, by written order, relax or modify the provisions of sections 32 and 33 in respect of such workers, to such extent and in such manner as they may think fit, and subject to such conditions as they may deem expedient to ensure control over periods of work.

(2) The Government or, subject to the control of the Government, the Chief Inspector, may, by written order, exempt, on such conditions as they or he may deem expedient, any or all of the adult workers in any factory, group or class of factories, from any or all of the provisions of sections 28, 29, 30, 31, 32 and 33, on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to the maximum limits prescribed under sub-section (4) of section 36.

(4) An order under sub-section (2) shall remain in force for such period as it may specify, but in no case for more than two months from the date on which notice thereof is given to the manager of the factory.

**37-A.** The provisions of this chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions, namely:—

(a) No exemption from the provisions of section 30 may be granted in respect of any women ;  
and



(b) No woman shall be allowed to work in a factory except between 6 a. m. and 7. a. m.

**38.** Where a worker works on a shift which extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted towards the previous day ;

Provided that the Government may, by order in writing, direct that in the case of any specified factory or any specified class of workers therein the ensuing day shall be deemed to be the period of twenty-four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day.

**39.** (1) Where a worker in a factory works for more than 60 hours a week or more than 11 hours in any day he shall be entitled in respect of the overtime work to pay at the rate of one-and-a-half times his ordinary rate of pay.

(2) Where any workers are paid on a piece rate basis the Government in consultation with the industry concerned may for the purposes of this section fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section.

(3) The Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

**40.** No adult worker shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

**41.** The Government may make rules providing that in any specified class or classes of factories work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time save with the permission of the Government and subject to such conditions as they may impose, either generally or in the case of any particular factory.



## V. SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN.

**42.** No child who has not completed his twelfth year shall be allowed to work in any factory.

*Prohibition of employment of young children.*

**43.** No child who has completed his twelfth year and no adolescent shall be allowed to work in any factory unless—

*Non-adult workers to carry tokens giving reference to certificates of fitness.*

(a) a certificate of fitness granted to him under section 44 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving reference to such certificate.

**44.** (1) A Certifying Surgeon shall, on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work.

*Certificates of fitness.*

(2) The Certifying Surgeon, after examination, may grant to such person, in the prescribed form—

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work; or

(b) a certificate of fitness to work in a factory as an adult if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory.

(3) A Certifying Surgeon may revoke any certificate granted under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Where a Certifying Surgeon refuses to grant a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, state his reasons in writing for so doing.

**45.** (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult, under clause (b) of sub-section (2) of section 44 and who, while in a factory, carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV.

*Effect of certificate granted to adolescent.*



(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under sub-section (2) of section 44, shall notwithstanding his age, be deemed to be a child for the purposes of this Act.

**46.** (1) No child shall be allowed to work in a factory for more than 5 hours in any day.

Restrictions on the  
working hours of a child.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven and a half hours in any day.

(3) No child shall be allowed to work in a factory except between 6 A. M. and 7 P. M.

Provided that the Government may, by notification in the Government Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 A. M. and 7-30 P. M.

(4) The provisions of section 29 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

**47.** (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 68, a notice of the periods for work for children, showing clearly the periods within which children may be required to work.

Notice of periods for  
work for children.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adults in section 32 and shall be such that children working for those periods would not be working in contravention of section 46.

(3) The provisions of section 33 shall apply also to the notice of periods for work for children.

(4) The Government may make rules prescribing forms for the notice of periods for work for children and the manner in which it shall be maintained.

**48.** (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing,

Register for child wor-  
kers.

- (a) the name of each child worker in the factory,
- (b) the nature of his work,



- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted,
- (e) the number of his certificate of fitness granted under section 44 (2) (a), and
- (f) such other particulars as may be prescribed.

(2) The Government may make rules prescribing the form of the Register of the Child Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**49.** No child shall be allowed to work otherwise than in accordance with the notice of periods for work for children displayed under sub-section (1) of section 47 and the entries made beforehand against his name in the Register of Child Workers maintained under sub-section (1) of section 48.

Hours of work to correspond with notice and register.

**50.** Where an Inspector is of opinion

- (a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or
  - (b) that a child or adolescent, working in a factory with a certificate is no longer fit to work in the capacity stated therein,
- he may serve on the manager of the factory a notice requiring that such person, or that such child or adolescent, as the case may be, shall be examined by a Certifying Surgeon, and such person, child or adolescent shall not, if the Inspector so directs, be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be.

Power to make rules.

**51.** The Government may make rules—

- (a) prescribing the forms of certificates of fitness to be granted under section 44 provided for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and such duplicates;
- (b) prescribing the physical standards to be attained by children and adolescent;
- (c) regulating the procedure of Certifying Surgeons under this chapter and specifying other duties which they may be required to perform in connection with the employment of children and adolescents in factories and



(d) providing for any other matter which may be expedient in order to give effect to the provisions of this chapter.

**51-A.** The Government may by written order exempt on such conditions as they may deem expedient any factory or class of factories from the operation of the provisions of section 42.

Power to exempt from provisions of section 42.

## VI. PENALTIES AND PROCEDURE.

### **52:** If in any factory—

Penalty for contravention of Act and rules.

- (a) there is any contravention—
  - (i) of any of the provisions of sections 11 to 23 inclusive, or
  - (ii) of any order made under any of the said sections, or
  - (iii) of any of the said sections read with rules made in pursuance thereof under clause (a) of section 26, or
  - (iv) of any rule made under any of the said sections or under clause (b), clause (c), or clause (g) of section 26 or section 27 or
  - (v) of any condition imposed under sub-section (3) of section 25 or
- (b) any person is allowed to work in contravention—
  - (i) of any of the provisions of sections 28 to 31 inclusive, 35 and 40, or
  - (ii) of any rule made under any of the said sections or under section 41, or
  - (iii) of any condition attached to any exemption granted under section 36 or section 37 or to any permission granted under section 41, or
- (c) there is any contravention of any of the provisions of sections 32 to 34 inclusive or of any rule made under section 32, section 34 or section 39, or of any condition attached to any exemption granted under section 34 or to any modification or relaxation made under section 37, or
- (d) any person is not paid any extra pay to which he is entitled under the provisions of section 39 or
- (e) any adolescent or child is allowed to work in contravention of any of the provisions of section 42, 43, 46, 49 and 50 or



(f) there is any contravention of section 47 or section 48 or of any rules made under either of these sections or under clause (d) of section 51, the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees:

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount.

**53.** If any person who has been convicted of any offence punishable under clauses (b) to (f) inclusive of section 52 is again guilty of any offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees:

Enhanced penalty in certain cases after previous conviction.

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished:

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

**54.** An occupier of factory who fails to give any notice required by sub-section (1) or sub-section (2) of section 7 shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to give notice of commencement of work or of change of manager.

**55.** Whoever wilfully obstructs an Inspector in the exercise of any power under section 9 or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any of the rules made thereunder, or conceals or prevents any worker in a factory from appearing before or being examined by an Inspector, shall be punishable with fine which may extend to five hundred rupees.

Penalty for obstructing Inspector.

**56.** A manager of a factory who fails to give notice of an accident as required under section 24 shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to give notice of accidents.



**57.** If in respect of any factory any return is not furnished as required under section 69, the manager and the occupier of the factory shall each be liable to fine which may extend to five hundred rupees :

Penalty for failure to make returns.

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted shall not exceed this amount.

**58.** Whoever smokes, or uses a naked light or causes or permits any such light to be used, in the vicinity of any inflammable material in a factory shall be punishable with fine which may extend to five hundred rupees.

Penalty for smoking or using naked light in vicinity of inflammable material.

**EXCEPTION.**—This provision does not extend to the use, in accordance with such precautions as may be prescribed, of a naked light in the course of a manufacturing process.

**59.** Whoever knowingly uses or attempts to use, as a certificate granted to himself under section 44, a certificate granted to another person under that section or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupee.

Penalty for using: also certificates.

**60.** If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to twenty rupees, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person.

Penalty on guardian for permitting double employment of a child.

**61.** A manager of a factory who fails to display the notice required under sub-section (1) of section 68 or by any rule made under this Act, or to display or maintain any such notice as required by sub-section (2) of that section, shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to display certain notices.

**62.** (1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished

Determination of "occupier" for purposes of this Chapter.



under this Chapter for any offence for which the occupier of the factory is punishable.

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in the State to be the occupier of the factory for the purposes of this Chapter, and such individual shall so long as he is so resident be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or a member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a shareholder, who is resident in either case in the State to be the occupier of the factory for the purposes of this Chapter, and such director or shareholder shall so long as he is so resident be deemed to be the occupier of the factory for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder

**63.** (1) Where the occupier or manager of a factory is charged with an offence against this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the Inspector at any time prior to the institution of the pro-



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ceedings—

(a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and

(b) by what person the offence has been committed, and

(c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders, the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

**64.** If a child over the age of six years is found inside any part of a factory in which children are working, he shall, until the contrary is proved, be deemed to be working in the factory.

Presumption as to employment.

**65** (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, the burden shall be on the accused to prove that such person is not under or over such age.

Evidence as to age.

A declaration in writing by a Certifying Surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that worker.

**66.** (1) No prosecution under this Act, except a prosecution under section 58, shall be instituted except by or with the previous sanction of the Inspector.

Cognisance of offences

(2) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act, or any rule or order made thereunder, other than an offence under section 58 or section 59.

**67.** No Court shall take cognizance of any offence under this Act or any rule or order thereunder, other than an offence under section 54 or section 56, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed:

Limitation of prosecution.

Provided that when the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within twelve months of the date on which



the offence is alleged to have been committed.

## VII. SUPPLEMENTAL.

**68.** (1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the Persian and Devnagari characters as Government may prescribe.

(2) All notices required to be displayed in a factory shall be displayed at some conspicuous place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

**69.** The Government may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical, as may in their opinion be required for the purposes of this Act

**70.** (1) All rules made under this Act shall be subject to the condition of previous publication, and the date to be specified shall not be less than two months from the date on which the draft of the proposed rules was published.

(2) All such rules shall be published in the Government Gazette and shall, unless some later date is appointed, come into force on the date of such publication.

**71.** This Act shall also apply to all factories belonging to Government.

**72.** No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

## THE AMMU AND KASHMIR REPEAL OF LAWS ACT, 1999.

### Act No. VIII of 1999.

#### CONTENTS.

#### SECTIONS.

1. Short title and extent.

. Repeal of Notification No. 19-L/1988, Notification No. L-24/1988 and Prevention of Seditious Meetings Act, 1971.



**THE JAMMU AND KASHMIR REPEAL OF LAWS ACT, 1999.****Act No. VIII of 1999.**

*(Received the assent of His Highness the Maharaja Bahadur on 22nd October, 1942/6th Katik 1999 and published in the Government Gazette dated 3rd Poh, 1999.)*

**An Act to Repeal certain laws**

WHEREAS it is expedient to provide for the repeal of certain laws ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir  
Short title and extent. Repeal of Laws Act, 1999.

(2) It extends to the whole of the Jammu and Kashmir State.

Repeal. 2. The following laws are hereby repealed :—

(1) Special Powers Notification No. 19-L of 1988,

(2) Notification No. L-24 of 1988 to provide against instigation to the refusal of the payment of certain liabilities, and

(3) Act for the Prevention of Seditious Meetings, 1971.

**THE JAMMU AND KASHMIR DISSOLUTION OF MUSLIM MARRIAGES ACT, 1999.****ACT No. X of 1999.****CONTENTS.****SECTIONS.**

1. Short title and extent.

2. Grounds for decree for dissolution of marriage.

**SECTIONS.**

3. Notice to heirs of husband when his whereabouts unknown.

4. Wife's conversion to another faith-effect.



## THE JAMMU AND KASHMIR DISSOLUTION OF MUSLIM MARRIAGES ACT, 1999.

### Act No. X of 1999.

*(Received the assent of His Highness the Maharaja Bahadur on 21st October, 1942 5th Katik 1999 and published in Government Gazette dated 3rd Poh, 1999.)*

**An Act to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of Marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.**

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie ;

It is hereby enacted as follows :—

(1) This Act may be called the Jammu and Kashmir  
Short title and extent. Dissolution of Muslim Marriages Act,  
 1999.

(2) It extends to the whole of the Jammu and Kashmir State.

Grounds for decree for dissolution of marriage. **2.** A woman who is the wife of a person according to the Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely.—

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that after she asked her husband to provide for her maintenance he wilfully neglected or failed for a period of not less than two years to do so;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a continuous period of four years or is suffering from leprosy;

(vii) that she, having been given in marriage before she attained puberty, repudiated the marriage before she attained the age of eighteen years;



Provided that the marriage has not been consummated;

Provided further that, if she has been given in marriage by her father or father's father, the marriage shall not be repudiated unless such father's father has acted fraudulently or the contract is to her manifest disadvantage;

(viii) that the husband treats her with cruelty, that is to say :—

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or,

(b) associates with women of evil repute or leads a life of debauchery, or,

(c) attempts to force her to lead an immoral life; or

(d) obstructs her in the observance of her religious profession or practice; or

(e) if he has more wives than one, does not treat her equitably;

(ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim Law;

Provided that :—

(a) a decree passed on ground (i) shall not take effect for a period of one year from the date of such decree, and if during such period the husband either appears in person before the Court or satisfies the Court through an authorised agent as to his whereabouts, the Court shall set aside the said decree;

(b) no decree shall be passed on ground (iii) until the sentence has become final; and

(c) in case of the impotency of the husband, before passing a decree on ground (v), the Court shall make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Notice to heirs of husband when his whereabouts unknown.

3. In a suit to which clause (i) of section 2 applies :—

(a) the names and addresses of the persons who would have been the heirs of the husband under Muslim Law if he had died on the date of the filing of the plaint, shall be stated in the plaint,

(b) notice of the suit shall be served on such persons, and such persons shall have the right to be heard in the suit,

Provided that the paternal uncle and the brother of the husband, if any, shall be cited as parties.



**4** The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage.

Wife's conversion to another faith-effect.  
 Provided that it shall so operate in the case of a married Muslim woman who was converted to Islam from some other faith but who re-embraces her former faith.

## THE JAMMU AND KASHMIR STATE AID TO INDUSTRIES ACT, 1999.

### Act No. XI of 1999.

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## THE JAMMU AND KASHMIR STATE AID TO INDUSTRIES ACT, 1999.

### Act XI of 1999.

*(Received the assent of His Highness the Maharaja Bahadur on 26th October, 1942/10th Katik 1999 and published in the Government Gazette dated 3rd Poh, 1999.)*

### An Act to provide State aid to improve the condition of industries.

WHEREAS it is expedient further to improve and regulate the giving of State aid for industrial purposes; It is hereby enacted as follows :—

Preamble.

#### I. PRELIMINARY.

1. (1) This Act may be called the Jammu and Kashmir State Aid to Industries Act, 1999.

Short title and extent.

(2) It extends to the whole of Jammu and Kashmir State.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(a) "Board" means the Board of Industries constituted under section 4 of this Act.

(b) "Borrower" means an individual, company or association or body of individuals, whether incorporated or not, to whom or to which State aid has been granted under this Act.



(c) "Company" means a company as defined in the Jammu and Kashmir Companies Act, 1977.

(d) "Director" means the Director of Industries, Jammu and Kashmir.

(e) "Industry" means any industrial business or enterprise conducted or undertaken either by an individual or a company, association or body of individuals, whether incorporated or not.

(f) "Machinery" includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process.

(g) "Prescribed" means prescribed by rules made under this Act.

(h) "State subject" means a State subject of class I or class II as defined in the Judicial Department Notification No. 1—L/84 of April 1927.

## II.

**3.** (1) For carrying out the purposes of this Act, the Government shall, as soon as possible, after the commencement of this Act, establish a Board to be called the "Board of Industries" consisting of the following members, namely :—

(a) The Minister-in-charge of Industries, Jammu and Kashmir ;

(b) The Director of Industries and Commerce, Jammu and Kashmir ;

(c) The Accountant General, Jammu and Kashmir ;

(d) Three members nominated by the Government from amongst those engaged within the State in industrial occupations ;

(e) The Manager or any other representative of the Jammu and Kashmir Bank Ltd ;

(f) Three members elected by non-official members of the Jammu and Kashmir Praja Sabha from amongst themselves election being in accordance with the principle of proportional representation by means of the single transferable vote :

Provided that the Board shall have power to invite for consultation, on any particular question before it, not more than two persons specially qualified to advise on the matter in question or having special knowledge of local conditions in the area where the industry in question is situate. Any person so invited by the Board shall not have the right to vote.



(2) The Minister-in-charge of Industries shall be *ex-officio* chairman and the Director shall be *ex-officio* Secretary of the Board

(3) Five members of the Board shall form a quorum.

(4) The Board may from time to time elect for such period as it thinks fit one of its members to be the vice chairman.

(5) The chairman or in his absence the vice chairman shall preside at every meeting of the Board and shall have a second or casting vote in all cases of equality of votes.

(6) In the absence of both the chairman and the vice chairman the members present at any meeting may elect one of their members to preside, who shall have a second or casting vote in all cases of equality of votes.

4. If by such date as may be fixed by Government, the Praja Sabha does not elect a member or members as provided in section 4, the Government shall appoint a suitable person or persons, as the case may be, from amongst the non-official members of the Praja Sabha, and any person so appointed shall be deemed to be a member as if he had been duly elected by the said Praja Sabha.

5. (1) Subject to the provisions of this Act, an appointed member shall hold office for 3 years, unless the Government otherwise direct, and an elected member shall hold office for 3 years or until such time as he ceases to be a member of the body electing him, whichever is shorter.

(2) An outgoing member may, if otherwise qualified be re-elected or re-appointed.

(3) Any appointed or elected member may resign his office by giving notice in writing to the chairman of the Board.

(4) Notwithstanding the expiration of the term of three years mentioned in sub-section (1) an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled, provided no vacancy shall be allowed to remain unfilled for more than one year.

6. (1) No act of the Board shall be deemed to be invalid by reason only that the number of the members constituting the Board was at any time less than the number provided in section 3.

(2) The Government may, by notification, remove any member of the Board if he



(a) refuses to act or becomes incapable of acting as a member of the Board ;

(b) is declared insolvent by a competent Court ;

(c) is convicted of any such offence or is subjected by a criminal Court to any such order as in the opinion of the Government implies a bar to his continuance as a member of the Board ; or

(d) fails to attend four consecutive meetings of the Board without sufficient excuse.

(3) The Government may fix a period during which any person so removed under sub-section (2) (b) of this section shall not be eligible for re-appointment or re-election.

**7.** On the occurrence of a vacancy among the appointed or elected members of the Board by reason of removal, resignation or death, a new member shall be appointed by the Government to fill the vacancy.

Casual vacancies.

**8.** The members of the Board and the members of the Committees which may be appointed by the Board when necessary, shall be paid remuneration and travelling allowance at the prescribed rates and on the prescribed conditions for attending meetings of the Board, or for performing any duty assigned to them by the Board for the purposes of this Act.

**9.** No member of the Board shall vote on or participate in any proceedings relating to any question coming up before the Board in the event of his having a direct or indirect pecuniary interest by himself or through his partner or in which he is interested professionally or on behalf of a client or as agent for any person other than the Government.

**EXPLANATION.**--In all such matters the decision of the chairman shall be final.

**10.** (1) The Board may make regulations consistent with this Act and the rules thereunder for the carrying out of all or any of its purposes.

Power of Board to make regulations.

(2) In particular and without prejudice to the generality of the foregoing power, the Board may make regulations regulating or determining all or any of the following matters, namely ;

(i) the time and place of its meeting ;

(ii) the manner in which notice of meetings shall be given ;

(iii) the conduct of proceedings at meetings ;

(iv) the division of duties among the members of the



Board ; and

(v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons.

**11.** (1) The Government may make rules consistent with this Act for carrying out all or any of its purposes.

Rule-making power,

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules for any of the following matters :—

(a) the class or classes of industrial business or enterprise to which and the purposes for which aid may be given ;

(b) the manner of making applications for State aid and the information to be given in such applications provided that no such rules shall require any applicant or grantee of aid to divulge any information relating to the technical details of any process or any patent owned by him ;

(c) the manner of conducting inquiries and the matters to be specially inquired into in dealing with applications for State aid and the powers to be exercised by the Director of Industries conducting such inquiries ;

(d) the mode of ascertaining the value of the assets of an industrial business or enterprise ; or of any property offered as collateral security for a loan.

(e) the nature and amount of the security to be taken for the due application and repayment of the State aid together with all interest due thereon and the rate of interest at which and the conditions under which State aid may be granted and the creation of a mortgage, floating charge or collateral security ;

(f) the inspection of the premises, buildings, plants and stock and the accounts of any industrial business or enterprise for which State aid has been granted ;

(g) the mode of keeping accounts and their audit and of furnishing returns of any industrial business or enterprise in respect of which State aid has been granted ;

(h) the appointment and functions of Government directors or the prescribing of other methods of control of industrial business or enterprise in respect of which State aid has been granted ;

(i) the application of profits, in cases in which the conditions under which loans or grants have been made have not been fulfilled ;

(j) the guaranteeing by His Highness' Government of cash credits, overdrafts or fixed advances by banks and the recognition of banks for this purpose ;



(k) the fixing of the period for the repayment of loans and the conditions and dates of the repayment of subsidies and grants ;

(l) the recovery of any moneys due under this Act ;

(m) the conditions under which and the security on which loans shall be granted or guarantees of a cash credit, overdraft or fixed advance with a bank given to industries ;

(n) the conditions relating to the supply of machinery by Government on hire purchase system ;

(o) rates of remuneration and T. A of members of the Board ; and

(p) the giving of preference amongst competing applicants for aid to the same industry provided that where the competition for aid is between a state subject of class I and a state subject of class II, the rules made shall give preference to the former.

**12.** It shall be the duty of the  
Duties of the Board. Board :—

(1) to report to the Government after such enquiry as it may deem necessary or as may be required by this Act on an application for State aid which may be referred to it for advice by the Government ;

(2) to advise the Government on any matters that may be referred to it ;

Provided that the Board shall have power to grant aid to any one industry upto a limit of Rs. 5,000.

Provided further that all recommendations for State aid exceeding Rs. 5,000 in any one case shall be submitted by the Board of Industries to the Government for sanction.

(3) Copies of all orders passed by Government on the reports made or advice tendered by the Board as well as notes on Government industrial schemes sanctioned by Government without reference to the Board shall be placed before the Board and Government shall consider on their merits any recommendations or suggestions made by the Board in respect of the practical working of such sanctioned schemes.

### III.—GENERAL PROVISIONS REGARDING GIVING OF STATE AID.

**13** (1) The State aid which may be given to industrial  
Forms of State Aid. business or enterprise may take one or more of the following forms:—

(a) granting a loan;

(b) guaranteeing the repayment of a loan advanced to the recipient of the aid by a Bank, individual or firm;

(c) paying a subsidy for the conduct of research or for



the purchase of machinery;

(d) subscribing to debentures;

(e) making a grant on favourable terms, of land, raw materials, firewood, timber, water, or any other article the ownership of which is vested in the Government;

(f) supply of machinery on the hire purchase system;

(g) imposing export duty on raw material or import duty on goods manufactured outside the State territory;

(h) exempting raw materials required for the industries from payment of customs duty;

(i) granting other facilities for the betterment of the industry or industries; or

(j) In such other manner as the Government may think fit.

(2) (i) No State aid shall be given to any individual or firm unless he or they are State subjects;

(ii) No State aid shall be given to any Joint Stock Company unless the Company is registered in the State with a rupee capital and has a majority of State subjects on its Board of Directors as well as on the list of share-holders.

Provided that in the case of Joint Stock Companies with a rupee capital of over two lacs where the Board decides by a vote of the majority that aid may be given to any particular industry in accordance with this Act, State aid may be granted without regard to the conditions hereinbefore stated in this section.

Nothing contained in sub-section (2) shall be a bar to the grant of aid to those companies declared as State subjects under order No. 98-H/39 issued in the Government Gazette of 27th Poh 1956.

Notwithstanding anything contained in the provisions of this Act, the Government reserves to itself the power to grant aid to any industry in any form.

**14** Application for State aid shall be made to the Director in such form and shall contain such information as may be prescribed.

Provided that neither the applicant nor the grantee of aid shall be required to divulge any information relating to the technical details of any process or any patent owned by him.

**15.** Every recipient of aid under this Act shall make provision for the training of State subject apprentices as the Government may from time to time prescribe.

Training of State subject apprentices.



#### IV. PROVISIONS REGULATING THE GIVING OF STATE AID OTHERWISE THAN BY THE SUPPLY OF MACHINERY ON THE HIRE PURCHASE SYSTEM.

**16.** On the receipt of an application for State aid, the Verification by Director. Director shall verify through the Revenue Department or other agency the facts stated therein. All such applications shall be placed by him with the report of the Department or other authorities along with his views before the Board for its consideration in the order of their receipt.

**17.** (1) When an application for a loan has been Security for repayment. accepted, the applicant shall execute a deed in the prescribed form undertaking to apply the money lent solely to the purpose or purposes for which and fulfil the conditions on which the loan was granted, and rendering himself and such property as may have been specified in the deed as security, and, in the event of that property being found insufficient his whole property then existing or acquired in future liable for the repayment of the loan with interest and costs, if any, incurred in advancing or recovering the loan or loans.

(2) When the application has been made by a firm or company the deed be executed by a duly authorised representative thereof, and the deed shall thereupon be deemed binding on all the members of the said firm or company jointly and severally and the property of the said firm or company shall be liable for the repayment of the loan in the same manner as if the loan had been granted to an individual.

(3) Notwithstanding anything contained in the Stamp and Registration Acts, all mortgage deeds executed in favour of the Government under the provisions of the Act shall be executed on a stamp paper of the value of Re. 1 and shall be registered without payment of any registration fee.

**18.** The amount of loan granted under this Act shall Limit of Loan, not exceed fifty per cent of the net value of the unencumbered assets accepted as security.

**19.** Every loan granted under this Act together with Recovery of dues. all interest due thereon if any, shall be repayable either in a lump sum or by instalments as may be provided for in the deed executed by the borrower under section 17 of this Act, provided that the period fixed for the repayment of such loan shall not exceed 20 year.



**20.** (1) When any loan or instalment or interest thereon falls due and is not paid on or before the due date or when a loan has been declared immediately repayable under section 25, the Director may cause a notice to be served on the borrower in the prescribed form calling upon him to pay the sums due within such time as may be fixed therein.

(2) Such notice shall contain intimation that in case of default the said officer will issue a declaration in the prescribed form showing the amount of the debt due and the property mentioned in the deed as liable to satisfy the same.

**21.** If within the time so fixed the sums due are not paid the Director shall issue the declaration as described in subsection (2) of section 20 and such declaration shall be published in the Gazette.

(2) Such declaration shall be conclusive evidence of its contents, and shall not be called into question in any Court or before any revenue authority by the borrower, his heirs legal representatives or assigns.

**22.** All moneys payable under this Act including any interest chargeable thereon and the cost, if any, incurred if not paid when due, may be recovered from the borrower and his surety if any under the law for the time being in force, as if they were arrears of land revenue.

**23.** On the receipt of a declaration made under section 20 any Revenue officer to whom the declaration has been forwarded shall immediately proceed to recover the sums due in the manner provided for the recovery of arrears of land revenue.

**24.** The Board or their representatives shall have free access for the inspection of the premises, buildings, plants, stock and all accounts relative to the industry.

**25.** In any case in which and any application for a loan has been made under this Act, the applicant, and at any time during the currency of a loan that has been granted, the borrower shall be bound:—

(a) to comply with any general or special order of the Director relating to the inspection of the premises, buildings, machinery and stock in hand of the industry;

(b) to permit inspection of all accounts relative to the industry;

(c) to furnish complete returns of all products,



manufactured or sold, both as regards description and quantity;

(d) to maintain such special accounts and to furnish such statements as the Director may from time to time require; and

(e) to submit the accounts of the industry to such audit as the Director may prescribe.

**26.** If the Director, after any inspection provided for in section 25 is satisfied that the money lent is not being applied to the purpose or purposes for which the loan was granted or that the conditions on which the loan was granted are not duly fulfilled, he may declare, notwithstanding anything contained in the deed executed under section 17 of this Act that the loan is immediately repayable and shall give notice of such declaration to the borrower.

**27.** If at any time during the currency of the loan, the value of the security falls below the outstanding balance of the loan, the Director may either proceed to recover in the manner laid down in sections 20, 21, 22, and 23 so much of such balance as is not adequately covered by the then existing value of the security or accept such additional or collateral security as he may deem sufficient.

**28.** If the borrower fails to comply with any order under clause (a) of section 25 or does not permit or obstructs the inspection of the accounts relative to the industry, or makes default in respect of any of the particulars specified in clauses (c), (d) (e) of the said section or if the borrower disposes of any profits in contravention of the provisions of section 29 of this Act, the Director may, after considering any representation the borrower may make, within such time, as may be fixed by him, proceed to recover the loan in the manner prescribed by this Act.

**29.** No borrower shall pay any dividend or distribute or take any profits in excess of such rate or percentage upon the paid up capital of the industry as the Government may from time to time fix, until the conditions on which the State aid has been granted are fulfilled.

**30.** Notwithstanding anything contained in this Act, the Government may, by the appointment of their own Directors or otherwise, exercise such control over the conduct of the industry to which State aid has been given as shall suffice in their opinion to safeguard their interests, provided that such right has been expressly



reserved by agreement at the time the aid was granted.

### V.—SUPPLEMENTAL

**31. (1)** The decision of the Government as to whether the conditions laid down in or under any provisions of this Act have been satisfied or violated shall be final and no suit shall be brought in any civil Court to set aside or modify any order made thereunder.

**(2)** No prosecution, suit or other proceeding shall lie against any Government officer or other authority invested with powers under this Act for anything done or intended to be done by him in good faith in the performance of his duties as such Government servant or authority.

**32.** The Jammu and Kashmir State Aid to Industries Act No. 9 of 1992 is hereby repealed, but all acts done, aid given, agreements made, orders passed and rules issued under the said Act shall remain in force unless expressly or impliedly cancelled by competent authority and shall be deemed to have been respectively done, given, made, passed and issued under this Act.

## THE JAMMU AND KASHMIR VILLAGE PANCHAYATS (VALIDATION) ACT, 1999.

Act No. XIII of 1999.

### CONTENTS.

#### PREAMBLE.

#### SECTIONS.

1. Short title, extent and commencement.

2. Jammu and Kashmir village Panchayat Act, 1992 (I of

#### SECTIONS.

1992) to apply retrospectively in certain Tehsils.

Schedule.



# THE JAMMU AND KASHMIR VILLAGE PANCHAYATS (Validation) ACT, 1999.

**Act, No. XIII of 1999.**

*Sanctioned by His Highness the Maharaja Bahadur and published in the Government Gazette dated 7th Phagon 1999.*

## **An Act to validate acts done and proceedings taken by certain Panchayats in the Provinces of Jammu and Kashmir.**

WHEREAS provision is made in Section 2 of the Jammu and Kashmir Village Panchayats Act, 1992, that the said Act shall come into operation on such date as His Highness' Government may, in respect of any Tehsil or part of a Tehsil, by notification direct;

And whereas the said Act has been enforced in the Tehsils specified in Column 1 of the schedule annexed hereto with effect from the dates specified in the corresponding entry of column 2 thereof, without the previous publication of a notification in this behalf under section 2 of the said Act;

And whereas panchayats established in these Tehsils have been functioning in good faith but without lawful authority;

And whereas acts done and proceedings taken by these panchayats are likely to be called in question;

And whereas it is expedient to validate all acts done and proceedings taken by such panchayats,

Short title extent and commencement.

We are hereby pleased to enact as follows :—

1. (1) This Act may be called the Village Panchayats, (Validation) Act, 1999.

(2) It shall extend to the whole of the Jammu and Kashmir State.

Jammu and Kashmir village Panchayat Act 1992 (1 of 1992) to apply retrospectively in certain Tehsil

(3) It shall come into force at once.

2. The Jammu and Kashmir village Panchayats Act, 1992 shall be deemed to have come into operation in the Tehsils mentioned in column 1 of the schedule annexed hereto with effect from the dates specified in the corresponding entry of column 2 thereof, and all acts done and proceedings taken by the panchayats established in such Tehsils shall have validity and effect as if the said Act had come into operation in these Tehsils from the dates specified against each of



them after the previous publication of a notification by the Government under section 2 of the said Act.

SCHEDULE.

Kulgam	...	...	...	15th Octobr 1937.
				<u>30th Assuj 1994.</u>
Badgam Tehsil	...	...	...	7th August 1937.
				<u>23rd Sawan 1994.</u>
Kathua Tehsil ...	...	...	...	14th January 1938.
				<u>2nd Magh 1994.</u>
Jasmergarh Tehsil	...	...	...	14th January 1938.
				<u>2nd Magh 1994.</u>
Basohli Tehsil	...	...	...	14th January 1938.
				<u>2nd Magh 1994.</u>
Reasi Tehsil	...	...	...	31st October 1939.
				<u>15th Katik 1996.</u>
Rampur Rajouri Tehsil	..	...	...	1st July 1941.
				<u>10th Har 19998.</u>

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# SUPPLEMENT 1999.

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Published under authority of His Highness' Government,  
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### **Preparatory Note.**

Supplement for Samvat 1999 to the Laws of Jammu and Kashmir is published to make the Laws complete upto the end of the Samvat year 1999. Amending Acts have not been included in this Volume as they are published by the Law Department in the form of Correction Slips which can be obtained from the Superintendent, Ranbir Government Press, Jammu, on moderate price. Supplement for Samvat 2000 will be published in due course. It is proposed that such supplements will be regularly published until a revised edition of the Laws of Jammu and Kashmir is published.

(Sd.) BADRI NATH,

*Deputy Law Secretary.*

*S. N. Dar*  
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**DONATED**

**By**

**PANDIT SHAMBOO NATH DAR,**  
**( 1901 — 1969 )**

**ADVOCATE,**  
**and former President**  
**SRINAGAR MUNICIPAL COUNCIL**







## Chronological list of Acts etc., incorporated in this Volume.

Year.	Short title and subject.	Page.
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1999	The Factories Act (VII of 1999) ... ..	2
1999	The Repeal of Laws Act (VIII of 1999) ... ..	28
1999	The Dissolution of Muslim Marriages Act (X of 1999) ...	29
1999	The Aid to Industries Act (XI of 1999) ... ..	32
1999	The Village Panchayats (Validation) Act (XIII of 1999) ...	43

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18

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# **THE ARYA SAMAJIST MARRIAGES VALIDATION ACT, 1999.**

**Act No. III of 1999.**

## **CONTENTS**

### **SECTION.**

1. Short title and extent.

### **SECTION.**

2. Validation of marriage out of caste etc.

# **THE JAMMU AND KASHMIR ARYA SAMAJIST MARRIAGES VALIDATION ACT 1999.**

**Act No. III of 1999.**

*(Received the assent of His Highness the Maharaja Bahadur on 17th April 1942/5th Baisakh 1999 and published in Government Gazette dated 22nd Jeth 1998/4th June 1942.*

**An Act to recognise and remove doubt as to the validity of marriages current among Arya Samajists**

WHEREAS it is expedient to recognise and place beyond doubt the validity of marriages between Arya Samajists ;

It is hereby enacted as follows ;

1. (1) This Act may be called the Jammu and Kashmir Arya Samajist Marriages Validation Act, 1999.

Short title and extent.

(2) It shall extend to the whole of the Jammu and Kashmir State and shall also apply to all subjects of His Highness the Maharaja Bahadur outside the State wherever they may be.

2. Notwithstanding any provision of Hindu Law, custom or usage to the contrary no marriage contracted, whether before or after the commencement of this Act, between two persons being at the time of the marriage Arya Samajists shall be invalid or shall be deemed ever to have been invalid, by reason only of the fact that the parties at any time belonged to different casts or different sub-casts of Hindus or that either or both of the parties at any time before the marriage professed a religion other than Hinduism.



**THE JAMMU AND KASHMIR FACTORIES ACT, 1999.****Act No. VII of 1999.****CONTENTS.****SECTIONS.****CHAPTER I.***Preliminary.*

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4. Seasonal Factories.
- 4-A. Power to declare departments to be separate factories.
5. Power to exempt on a change in the factory.
- 5-A. Power to declare places to be factories.
6. Power to exempt during public emergency.
7. Notice to Inspector before Commencement of work.

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SECTIONS.

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53. Enhanced penalty in certain cases after previous conviction
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## SECTION.

## SECTION.

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65. Evidence as to age.

66. Cognisance of offences.

67. Limitation of prosecution.

68. Display of factory notices.

69. Power of Government to make rules.

70. Publication of rules.

71. Application of the Act to Government factories.

72. Protection to persons acting under this Act.

## THE JAMMU AND KASHMIR FACTORIES ACT 1999.

### Act No VII of 1999.

*(Received the assent of His Highness the Maharaja Bahadur on 28th May 1942/15th Jeth 1999 and published in the Government Gazette dated 15th Sawan, 1999.)*

### An Act to make provision for regulating labour in Factories.

WHEREAS it is expedient to make the provision for regulating labour in the factories ; It is hereby enacted as follows :—

Preamble.

#### I. PRELIMINARY.

1. (a) This Act may be cited as the Jammu and Kashmir Factories Act, 1999.

Short title extent and enforcement.

(b) It shall extend to the whole of the State and shall come into force on such date as the Government may fix by notification published in the Government Gazette.

2. In this Act, unless there is anything repugnant in the subject or context :—

Definitions.

(a) "adolescent" means a person who has completed his fifteenth but has not completed his seventeenth year ;

(b) "adult" means a person who has completed his seventeenth year ;



(c) "child" means a person who has not completed his fifteenth year ;

(d) "day" means a period of twenty-four-hours beginning at midnight,

(e) "factory" means any premises including the precincts thereof whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on ;

(f) "machinery" includes all plant whereby power is generated, transformed, transmitted, or applied ;

(g) "manufacturing process" means any process

(i) for making, altering, repairing, ornamenting finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal or

(ii) for pumping oil, water or sewage or

(iii) for generating, transforming or transmitting power.

(h) "occupier" of a factory means the person who has ultimate control over the affairs of the factory : provided that where the affairs of a a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory ;

(i) "power" means electrical energy and any other form of energy which is mechanically transmitted and is not generated by human or animal agency ;

(j) "prescribed" means prescribed by rules made under this Act ;

(k) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of sets is called "relay" and the period or periods for which it works is called a "shift".

(l) "week" means a period of seven days beginning at midnight on Saturday night ;

(m) "worker" means a person employed whether for wages or not, in any manufacturing process or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on ;

**3.** References to time of day in this Act are references to Indian Standard time, which is five and a half hours ahead of Greenwich Mean Time.

Reference to time of day.

Time.



4. (1) For the purposes of this Act, a factory which is exclusively engaged in one or more of the manufacturing processes which cannot be carried on except during particular seasons or at times dependant on the irregular action of natural forces, is a seasonal factory.

Seasonal Factories.

Provided that the Government may, by notification in the Government Gazette, declare any such factory in which manufacturing processes are ordinarily carried on for more than one hundred and eighty working days in a year not to be a seasonal factory for purposes of this Act.

(2) The Government may, by notification in the Government Gazette declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in a year to be a seasonal factory for the purposes of this Act.

4-A. The Government may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

Powers to declare departments to be separate factories.

5. Where the Government are satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty or is not likely to be twenty or more on any day during the ensuing twelve months they may, by order in writing, exempt such factory from the operation of this Act ;

Power to exempt on a change in the factory.

Provided that any exemption so granted shall cease to have effect on and after any day on which twenty or more workers work in the factory.

5-A (1) Notwithstanding anything contained in clause (e) of section 2, the Government may, by notification in the Government Gazette, declare any place wherein manufacturing process is carried on whether with or without the aid of power, and wherein on anyone day of the twelve months preceding the notification, ten or more workers were employed, to be a factory for all or any of the purposes of this Act.

Powers to declare places to be factories.

(2) A notification under sub-section (1) may be made in respect of any specified place or class of places.

(3) A notification under sub-section (1) shall cease to have effect in respect of any place after the lapse of twelve months during which not more than nine workers were employed there in on any day.



6. In any case of public emergency the Government may, by notification in the Government Gazette, exempt any factory from any or all of the provisions of this Act for such period as they may think fit.

7. Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season the occupier shall send to the Inspector a written notice containing

- (a) the name of the factory and its situation,
- (b) the address to which communications relating to the factory should be sent,
- (c) the nature of the manufacturing processes to be carried on in the factory,
- (d) the nature and the amount of the power to be used, and
- (e) the name of the person who shall be the manager of the factory for the purposes of this Act.

(ii) Whenever another person is appointed as manager the occupier shall send to the inspector a written notice of the change within seven days from the date of which the new manager assumes charge.

(iii) During any period for which no person has been designated as manager of a factory under this section, or during which the person designated does not manage the factory, any person found acting as manager or, if no such person is found, the occupier himself shall be deemed to be the manager of the factory for the purposes of this Act.

#### THE INSPECTING STAFF.

8. (i) The Government may by notification in the Government Gazette appoint such persons as they think fit to be Inspectors for the purposes of this Act within such local limits as they may assign to them respectively.

(ii) The Government may by notification as aforesaid appoint any person to be the Chief Inspector who shall in addition to the powers conferred on a chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(iii) No person shall be appointed to be an Inspector under sub-section (i) or a Chief Inspector under sub-section (ii) or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested



in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(iv) Every District Magistrate and every sub-Divisional Magistrate shall be Inspectors within their respective jurisdictions.

(v) The Government may also, by notification as aforesaid, appoint such public officers as they think fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as they may assign to them respectively.

(vi) In any area where there are more inspectors than one, the Government may by notification as aforesaid, declare the powers which such inspectors shall respectively exercise, and the Inspector to whom the prescribed notices are to be sent.

(vii) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the Ranbir Penal Code and shall be officially subordinate to such authority as the Government may specify in this behalf.

**9.** Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,

Powers of Inspectors.

(a) enter, with such assistants (if any), being persons in the service of the Government or of any municipal or other public authority, as he thinks fit, any place which is, or which he has reason to believe to be used as a factory ;

(b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act ; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act :

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

**10.** The Government may appoint such registered medical practitioners as they think fit to be Certifying Surgeons for the purposes of this Act within such local limits as they may assign to them respectively.

Certifying Surgeons.

*Explanation.*—In this section a registered medical practitioner means any person registered under the Jammu and Kashmir Medical Registration Act 1998.



## III.—HEALTH AND SAFETY.

**11.** Every factory shall be kept clean and free from effluva arising from any drain, privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed, and these methods may include lime-washing, or colour washing varnishing, painting, disinfecting and deodorizing.

Cleanliness.

**12:** (1) Every factory shall be ventilated in accordance with such standards and by such methods as may be prescribed.

Ventilation.

(2) Where gas, dust or other impurity is generated in the course of work, adequate measures shall be taken to prevent injury to the health of workers.

(3) If it appears to the Inspector that in any factory gas, dust or other impurities generated in the course of work is being inhaled by the workers to an injurious extent, and that such generation or inhalation could be prevented by the use of mechanical or other devices, he may serve on the manager of the factory an order in writing, directing that mechanical or other devices for preventing such generation or inhalation shall be provided before a specified date, and shall thereafter be maintained in good order and used throughout working hours.

(4) The Government may make rules for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities, which may be injurious to workers and specifying the nature of such devices.

**13.** In order that no room in a factory shall be crowded during working hours to a dangerous extent or to an extent which may be injurious to the health of the workers, the proportion which the number of cubic feet of space in a room and the number of superficial feet of its floor area bears to the number of workers working at any time therein shall not be less than such standards as may be prescribed either generally or for the particular class of work carried on in the room.

Overcrowding.

**14.** (1) A factory shall be sufficiently lighted during all working hours.

Lighting.

(2) If it appears to the Inspector that any factory is not sufficiently lighted, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.



(3) The Government may make rules requiring that all factories of specified classes shall be lighted in accordance with prescribed standards.

**15.** (1) In every factory a sufficient supply of water fit for drinking shall be provided for the workers at suitable places.

Water.

(2) The supply required by sub-section (1) shall comply with such standards as may be prescribed.

(3) In every factory in which any process involving contact by the workers with injurious or obnoxious substances is carried on, a sufficient supply of water suitable for washing shall be provided for the use of workers, at suitable places and with facilities for its use, according to such standards as may be prescribed.

**16.** For every factory sufficient latrines and urinals according to the prescribed standards, shall be provided, for male workers and for female workers separately, of suitable patterns and at convenient places as prescribed, and shall be kept in a clean and sanitary condition during all working hours.

Latrines and Urinals.

**17.** In every factory such precautions against fire shall be taken as may be prescribed.

Precautions against fire.

**18.** (1) Every factory shall be provided with such means of escape in case of fire as can reasonably be required in the circumstances of each factory.

Means of escape.

(2) In every factory the doors of each room in which more than twenty persons are employed shall except in the case of sliding doors be constructed so as to open out-wards, or, where the door is between the two rooms, in the direction of nearest exit from the building and no such door shall be locked or obstructed while any work is being carried on in the room.

(3) If it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(4) The means of escape shall not be obstructed while any work is being carried on in the factory.

**19.** (1) In every factory the following shall be kept adequately fenced, namely :—

Fencing.

(a) every exposed moving part of a prime mover and every flywheel directly connected to a prime mover ;



(b) every hoist or lift, hoist-well or lift-well and every trap door or similar opening near which any person may have to work or pass; and

(c) every part of the machinery which the Government may prescribe.

(2) If it appears to the Inspector that any other part of the machinery in a factory is dangerous if not adequately fenced, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) All fencing required by or under this section or under sub-section (1) of section 21 shall be maintained in an efficient state at all times when the workers have access to the parts required to be fenced except where they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or altering the gearing or arrangements of the machinery.

(4) Such further provisions as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery in a factory.

**20.** If it appears to the Inspector that any building or part of a building or any other part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory an order in writing requiring him before a specified date :—

Power to require specifications of defective parts or tests of stability. (a) to furnish such drawings, specifications, and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality of any specified parts and to inform the Inspector of the results thereof.

**21.** (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery, or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

Safety of buildings and machinery. (2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways,



machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

**22.** (1) No woman or child shall be allowed to clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed and moving parts of any machinery which is in motion under power.

(2) The Government may, by notification in the Government Gazette, prohibit, in any specified factory or class of factories the cleaning or oiling by any person of specified parts of machinery when these parts are in motion under power.

**23.** (1) The Government may make rules prohibiting the admission to any specified class of factories, or to specified parts thereof, of children who cannot be lawfully employed therein.

(1) If it appears to the Inspector that the presence in any factory or part of factory of children who cannot be lawfully employed therein may be dangerous to them or injurious to their health, he may serve on the manager of the factory an order in writing directing him to prevent the admission of such children to the factory or any part of it.

**24.** Where in any factory an accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work in the factory during the forty-eight hours after the accident occurred, or which is of any nature which may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities and in such form and within such time, as may be prescribed.

**25.** (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Chapter or the occupier of the factory, may, within thirty days of the service of the order appeal against it to the Government or to such authority as the Government may appoint in this behalf, and the Government or appointed authority may, subject to rules made in this behalf, confirm, modify or reverse the order.

(2) The appellate authority may, and if so required in the petition or appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate



authority and the other by such body representing the industry concerned as the Government may prescribe in this behalf :

Provided that if no assessor is appointed by such body or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

(3) Except in the case of an appeal against an order under sub-section (2) of section 21 or sub-section (2) of section 23 the appellate authority may suspend the order appealed against pending the decision of the appeal, subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case.

Power of Government  
to make rules to supple-  
ment this Chapter.

**26.** The Government may make rules :—

(a) providing for any matter which, according to any of the provision of this chapter, is or may be prescribed ;

(b) requiring the managers of factories to maintain stores of first aid appliances and provide for their proper custody ;

(c) providing against danger arising from the use of mechanical transport in factories ;

(d) prescribing the manner of the service of orders under this chapter on managers of factories ;

(e) regulating the procedure to be followed in presenting and hearing appeals under section 25 and the appointment and remuneration of assessors ;

(f) regulating the exercise by Inspectors of their powers under this chapter and

(g) providing for any other matter which may be expedient in order to give effect to the provisions of this chapter.

**27.** (1) The Government may make rules requiring that in any specified factory wherein more than one hundred and fifty workers are ordinarily employed an adequate shelter shall be provided for the use of workers during periods of rest, and such rules may prescribe the standards of such shelters.

(2) The Government may also make rules for any class of factories and for the whole or any part of the State requiring that work on a manufacturing process carried on with the aid of power shall not be begun in any building or part of a building erected or taken into use as a factory after the commencement of this Act,

Power to make rules  
relating to shelters for  
workers during rest.

Certificates of stability



until a certificate of stability in the prescribed form, signed by a person possessing the prescribed qualifications, has been sent to the Inspector.

(3) Where the Government is satisfied that any operation in a factory exposes any persons employed upon it to a serious risk of bodily injury poisoning or disease, it may make rules applicable to any factory or class of factories in which the operation is carried on—

(a) specifying the operation and declaring it to be hazardous,

(b) prohibiting or restricting the employment of women or children upon the operation,

(c) providing for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment, and

(d) providing for the protection of all persons employed upon the operation or in the vicinity of the places where it is carried on.

## VI RESTRICTION ON WORKING HOURS OF ADULTS.

**28.** No adult worker shall be allowed to work in the factory for more than fifty-four hours in any week, or where the factory is a seasonal one, for more than sixty hours in any week ;

Weekly hours. Provided that an adult worker in a non-seasonal factory engaged in work which for the technical reasons must be continuous throughout the day may work for fifty-six hours in any week.

**29.** (1) No adult worker shall be allowed to work in any factory on a Sunday unless—

Weekly holidays. (a) he has had or will have a holiday for a whole day one of the three days immediately before or after that Sunday, and

(b) the manager of the factory has, before that Sunday or the substituted day, whichever is earlier—

(i) delivered a notice to the office of Inspector of his intention to require the worker to work on the Sunday and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory ;

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.



(2) Notices given under sub-section (1) may be cancelled by a notice delivered to the office of the Inspector and a notice displayed in the factory not later than the day before the Sunday or the holiday to be cancelled, whichever is earlier.

(3) Where in accordance with the provisions of sub-section (1), any worker works on a Sunday and has had a holiday on one of the three days immediately before it, that Sunday shall for the purpose of calculating his weekly hours of work be included in the preceding week.

**30.** No adult worker shall be allowed to work in a factory for more than ten hours in any day.

Daily hours.

Provided that a male adult worker in a seasonal factory may work for eleven hours in any day.

**31.** The periods of work of adult workers in a factory during each day shall be fixed so that no period shall exceed six hours, and so that no worker shall work for more than six hours before he has had an interval for rest of at least an hour.

Intervals for rest.

**32.** (1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 68 a notice of periods for work for Adults showing clearly the periods within which adult workers may be required to work.

Notice of periods for work for adults and preparation thereof.

(2) The periods shown in the notice required by sub-section (1) shall be fixed before hand in accordance with the following provisions of this section and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 28, 29, 30, and 31.

(3) Where all the adult workers in a factory are required to work within the same periods, the Manager of the Factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work within the same periods, the manager of the factory shall classify them into groups according to the nature of their work.

(5) For each group which is not required to work on a system of shifts, the Manager of the factory shall fix the periods within which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subjected to predetermined periodical changes of shift, the manager of the factory shall fix the period within which each relay of the group may be required to work.



(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the Manager of the factory shall draw up a scheme of shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The Government may make rules prescribing forms for the notice of periods for work for Adults and the manner in which it shall be maintained.

**33.** (1) A copy of the notice referred to in sub-section (1) of section 32 shall be sent in duplicate to the Inspector within fourteen days after the commencement of this Act, or, if the factory begins work after the commencement of this Act before the day on which it begins work.

(2) Any proposed change in the system of work in a factory which will necessitate a change in the notice shall be notified to the Inspector, in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

**34.** (1) The manager of every factory shall maintain a register of adult workers showing

- (a) the name of each adult worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) such other particulars as may be prescribed.

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of and be treated as the Register of Adult Workers in that factory :

Provided further that, where the Government are satisfied that the conditions of work in any factory or class of factories are such that there is no appreciable risk of contravention of the provisions of this chapter in the case of that factory or factories of that class, as the case may be, the Government may, by written order, exempt, on such conditions as they may impose, that factory or all factories of that class, as the case may be, from the provisions of this



section.

(2) The Government may make rules prescribing the form of the Register of Adult Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**35.** No adult worker shall be allowed to work otherwise than in accordance with the notice of periods for work for adults displayed under sub-section (1) of section 32 and the entries made before-hand against his name in the Register of Adult Workers maintained under section 34.

Hours of work to correspond with notice under section 31 and Register under section 33.

**36.** (1) The Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provisions of this Chapter shall not apply to any person so defined.

Power to make rules exempting from restrictions.

(2) The Government may make rules for adult workers providing for the exemption, to such extent and subject to such conditions as may be prescribed in such rules,—

(a) of workers engaged on urgent repairs—from the provisions of sections 28, 29, 30 and 31.—

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory from the provisions of sections 28, 29, 30 and 30 and 31 ;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under section 31 from the provisions of sections 28, 29, 30, and 31 ;

(d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day from the provisions of sections 28, 29, 30 and 31 ;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day from the provisions of section 29 ;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons from the provisions of section 29 ;

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces from the provisions of section 29 and section 31 ;



(h) of workers engaged in engine-room or boiler-houses from the provisions of section 29.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 32 and 33 which the Government may deem to be expedient, subject to such conditions as they may impose.

(4) In making rules under this section the Government shall prescribe the maximum limits for the weekly hours of work for all classes of workers, and any exemption given other than an exemption under clause (a) of sub-section (2), shall be subject to such limits.

(5) Rules made under this section shall remain in force for not more than three years.

**37.** (1) Where the Government are satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, they may, by written order, relax or modify the provisions of sections 32 and 33 in respect of such workers, to such extent and in such manner as they may think fit, and subject to such conditions as they may deem expedient to ensure control over periods of work.

(2) The Government or, subject to the control of the Government, the Chief Inspector, may, by written order, exempt, on such conditions as they or he may deem expedient, any or all of the adult workers in any factory, group or class of factories, from any or all of the provisions of sections 28, 29, 30, 31, 32 and 33, on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to the maximum limits prescribed under sub-section (4) of section 36.

(4) An order under sub-section (2) shall remain in force for such period as it may specify, but in no case for more than two months from the date on which notice thereof is given to the manager of the factory.

**37-A.** The provisions of this chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions, namely :—

(a) No exemption from the provisions of section 30 may be granted in respect of any women ;  
and



(b) No woman shall be allowed to work in a factory except between 6 a. m. and 7. a. m.

**38.** Where a worker works on a shift which extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted towards the previous day ;

Provided that the Government may, by order in writing, direct that in the case of any specified factory or any specified class of workers therein the ensuing day shall be deemed to be the period of twenty-four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day.

**39.** (1) Where a worker in a factory works for more than 60 hours a week or more than 11 hours in any day he shall be entitled in respect of the overtime work to pay at the rate of one-and-a-half times his ordinary rate of pay.

(2) Where any workers are paid on a piece rate basis the Government in consultation with the industry concerned may for the purposes of this section fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section.

(3) The Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

**40.** No adult worker shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

**41.** The Government may make rules providing that in any specified class or classes of factories work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time save with the permission of the Government and subject to such conditions as they may impose, either generally or in the case of any particular factory.



## V. SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN.

**42.** No child who has not completed his twelfth year shall be allowed to work in any factory.

*Prohibition of employment of young children.*

**43.** No child who has completed his twelfth year and no adolescent shall be allowed to work in any factory unless—

*Non-adult workers to carry tokens giving reference to certificates of fitness.*

(a) a certificate of fitness granted to him under section 44 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving reference to such certificate.

**44.** (1) A Certifying Surgeon shall, on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work.

*Certificates of fitness.*

(2) The Certifying Surgeon, after examination, may grant to such person, in the prescribed form—

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work; or

(b) a certificate of fitness to work in a factory as an adult if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory.

(3) A Certifying Surgeon may revoke any certificate granted under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Where a Certifying Surgeon refuses to grant a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, state his reasons in writing for so doing.

**45.** (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult, under clause (b) of sub-section (2) of section 44 and who, while in a factory, carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV.

*Effect of certificate granted to adolescent.*



(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under sub-section (2) of section 44, shall notwithstanding his age, be deemed to be a child for the purposes of this Act.

**46.** (1) No child shall be allowed to work in a factory for more than 5 hours in any day.

Restrictions on the working hours of a child.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven and a half hours in any day.

(3) No child shall be allowed to work in a factory except between 6 A. M. and 7 P. M.

Provided that the Government may, by notification in the Government Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 A. M. and 7-30 P. M.

(4) The provisions of section 29 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

**47.** (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 68, a notice of the periods for work for children, showing clearly the periods within which children may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adults in section 32 and shall be such that children working for those periods would not be working in contravention of section 46.

(3) The provisions of section 33 shall apply also to the notice of periods for work for children.

(4) The Government may make rules prescribing forms for the notice of periods for work for children and the manner in which it shall be maintained.

**48.** (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing,

Register for child workers.

- (a) the name of each child worker in the factory,
- (b) the nature of his work,



- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted,
- (e) the number of his certificate of fitness granted under section 44 (2) (a), and
- (f) such other particulars as may be prescribed.

(2) The Government may make rules prescribing the form of the Register of the Child Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**49.** No child shall be allowed to work otherwise than in accordance with the notice of periods for work for children displayed under sub-section (1) of section 47 and the entries made beforehand against his name in the Register of Child Workers maintained under sub-section (1) of section 48.

Hours of work to correspond with notice and register.

**50.** Where an Inspector is of opinion

(a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or

(b) that a child or adolescent, working in a factory with a certificate is no longer fit to work in the capacity stated therein,

he may serve on the manager of the factory a notice requiring that such person, or that such child or adolescent, as the case may be, shall be examined by a Certifying Surgeon, and such person, child or adolescent shall not, if the Inspector so directs, be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be.

Power to make rules.

**51.** The Government may make rules—

(a) prescribing the forms of certificates of fitness to be granted under section 44 provided for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and such duplicates ;

(b) prescribing the physical standards to be attained by children and adolescent ;

(c) regulating the procedure of Certifying Surgeons under this chapter and specifying other duties which they may be required to perform in connection with the employment of children and adolescents in factories and



(d) providing for any other matter which may be expedient in order to give effect to the provisions of this chapter.

**51-A.** The Government may by written order exempt on such conditions as they may deem expedient any factory or class of factories from the operation of the provisions of section 42.

Power to exempt from provisions of section 42.

## VI. PENALTIES AND PROCEDURE.

### 52. If in any factory—

Penalty for contravention of Act and rules

- (a) there is any contravention—
  - (i) of any of the provisions of sections 11 to 23 inclusive, or
  - (ii) of any order made under any of the said sections, or
  - (iii) of any of the said sections read with rules made in pursuance thereof under clause (a) of section 26, or
  - (iv) of any rule made under any of the said sections or under clause (b), clause (c), or clause (g) of section 26 or section 27 or
  - (v) of any condition imposed under sub-section (3) of section 25 or

- (b) any person is allowed to work in contravention—
  - (i) of any of the provisions of sections 28 to 31 inclusive, 35 and 40, or
  - (ii) of any rule made under any of the said sections or under section 41, or
  - (iii) of any condition attached to any exemption granted under section 36 or section 37 or to any permission granted under section 41, or

(c) there is any contravention of any of the provisions of sections 32 to 34 inclusive or of any rule made under section 32, section 34 or section 39, or of any condition attached to any exemption granted under section 34 or to any modification or relaxation made under section 37, or

(d) any person is not paid any extra pay to which he is entitled under the provisions of section 39 or

(e) any adolescent or child is allowed to work in contravention of any of the provisions of section 42, 43, 46, 49 and 50 or



(f) there is any contravention of section 47 or section 48 or of any rules made under either of these sections or under clause (d) of section 51, the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees:

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount.

**53.** If any person who has been convicted of any offence punishable under clauses (b) to (f) inclusive of section 52 is again guilty of any offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees:

Enhanced penalty in certain cases after previous conviction.

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished:

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

**54.** An occupier of factory who fails to give any notice required by sub-section (1) or sub-section (2) of section 7 shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to give notice of commencement of work or of change of manager.

**55.** Whoever wilfully obstructs an Inspector in the exercise of any power under section 9 or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any of the rules made thereunder, or conceals or prevents any worker in a factory from appearing before or being examined by an Inspector, shall be punishable with fine which may extend to five hundred rupees.

Penalty for obstructing Inspector.

**56.** A manager of a factory who fails to give notice of an accident as required under section 24 shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to give notice of accidents.



**57.** If in respect of any factory any return is not furnished as required under section 69, the manager and the occupier of the factory shall each be liable to fine which may extend to five hundred rupees :

Penalty for failure to make returns.

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted shall not exceed this amount.

**58.** Whoever smokes, or uses a naked light or causes or permits any such light to be used, in the vicinity of any inflammable material in a factory shall be punishable with fine which may extend to five hundred rupees.

Penalty for smoking or using naked light in vicinity of inflammable material.

**EXCEPTION.**—This provision does not extend to the use, in accordance with such precautions as may be prescribed, of a naked light in the course of a manufacturing process.

**59.** Whoever knowingly uses or attempts to use, as a certificate granted to himself under section 44, a certificate granted to another person under that section or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupee.

Penalty for using: also certificates.

**60.** If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to twenty rupees, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person.

Penalty on guardian for permitting double employment of a child.

**61.** A manager of a factory who fails to display the notice required under sub-section (1) of section 68 or by any rule made under this Act, or to display or maintain any such notice as required by sub-section (2) of that section, shall be punishable with fine which may extend to five hundred repees.

Penalty for failure to display certain notices.

**62.** (1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished

Determination of "occupier" for purposes of this Chapter.



under this Chapter for any offence for which the occupier of the factory is punishable.

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in the State to be the occupier of the factory for the purposes of this Chapter, and such individual shall so long as he is so resident be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or a member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a shareholder, who is resident in either case in the State to be the occupier of the factory for the purposes of this Chapter, and such director or shareholder shall so long as he is so resident be deemed to be the occupier of the factory for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder

**63.** (1) Where the occupier or manager of a factory is charged with an offence against this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of Inspector at any time prior to the institution of the pro-

Exemption of occupier or manager from liability in certain cases.



ceedings—

(a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and

(b) by what person the offence has been committed, and

(c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders, the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

**64.** If a child over the age of six years is found inside any part of a factory in which children are working, he shall, until the contrary is proved, be deemed to be working in the factory.

**65** (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, the burden shall be on the accused to prove that such person is not under or over such age.

A declaration in writing by a Certifying Surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that worker.

**66.** (1) No prosecution under this Act, except a prosecution under section 58, shall be instituted except by or with the previous sanction of the Inspector.

(2) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act, or any rule or order made thereunder, other than an offence under section 58 or section 59.

**67.** No Court shall take cognizance of any offence under this Act or any rule or order thereunder, other than an offence under section 54 or section 56, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed:

Provided that when the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within twelve months of the date on which



the offence is alleged to have been committed.

## VII. SUPPLEMENTAL.

**68.** (1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the Persian and Devnagari characters as Government may prescribe.

(2) All notices required to be displayed in a factory shall be displayed at some conspicuous place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

**69.** The Government may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical, as may in their opinion be required for the purposes of this Act

Power of Government to make rules.

**70.** (1) All rules made under this Act shall be subject to the condition of previous publication, and the date to be specified shall not be less than two months from the date on which the draft of the proposed rules was published.

Application of the Act to Government factories.

(2) All such rules shall be published in the Government Gazette and shall, unless some later date is appointed, come into force on the date of such publication.

**71.** This Act shall also apply to all factories belonging to Government.

Application of rules to Government factories.

**72.** No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act.

# THE AMMU AND KASHMIR REPEAL OF LAWS ACT, 1999.

## Act No. VIII of 1999.

### CONTENTS.

#### SECTIONS.

1. Short title and extent.

Repeal of Notification No. 19-L/1988, Notification No. L-24/1988 and Prevention of Seditious Meetings Act, 1971.



**THE JAMMU AND KASHMIR REPEAL OF LAWS ACT, 1999.****Act No. VIII of 1999.**

*(Received the assent of His Highness the Maharaja Bahadur on 22nd October, 1942/6th Katik 1999 and published in the Government Gazette dated 3rd Poh, 1999.)*

**An Act to Repeal certain laws**

WHEREAS it is expedient to provide for the repeal of certain laws ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Repeal of Laws Act, 1999.

Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.

Repeal.

2. The following laws are hereby repealed :—

(1) Special Powers Notification No. 19-L of 1988,

(2) Notification No. L-24 of 1988 to provide against instigation to the refusal of the payment of certain liabilities, and

(3) Act for the Prevention of Seditious Meetings, 1971.

**THE JAMMU AND KASHMIR DISSOLUTION OF MUSLIM MARRIAGES ACT, 1999.****ACT No. X of 1999.****CONTENTS.****SECTIONS.**

1. Short title and extent.
2. Grounds for decree for dissolution of marriage.

**SECTIONS.**

3. Notice to heirs of husband when his whereabouts unknown.
4. Wife's conversion to another faith-effect.



# THE JAMMU AND KASHMIR DISSOLUTION OF MUSLIM MARRIAGES ACT, 1999.

## Act No. X of 1999.

*(Received the assent of His Highness the Maharaja Bahadur on 21st October, 1942 5th Katik 1999 and published in Government Gazette dated 3rd Poh, 1999.)*

**An Act to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of Marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.**

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie ;

It is hereby enacted as follows :—

(1) This Act may be called the Jammu and Kashmir  
 Short title and extent. Dissolution of Muslim Marriages Act,  
 1999.

(2) It extends to the whole of the Jammu and Kashmir State.

2. A woman who is the wife of a person according to the Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely.—

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that after she asked her husband to provide for her maintenance he wilfully neglected or failed for a period of not less than two years to do so;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a continuous period of four years or is suffering from leprosy;

(vii) that she, having been given in marriage before she attained puberty, repudiated the marriage before she attained the age of eighteen years;



Provided that the marriage has not been consummated;

Provided further that, if she has been given in marriage by her father or father's father, the marriage shall not be repudiated unless such father's father has acted fraudulently or the contract is to her manifest disadvantage;

(viii) that the husband treats her with cruelty, that is to say :—

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or,

(b) associates with women of evil repute or leads a life of debauchery, or,

(c) attempts to force her to lead an immoral life; or

(d) obstructs her in the observance of her religious profession or practice; or

(e) if he has more wives than one, does not treat her equitably;

(ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim Law;

Provided that :—

(a) a decree passed on ground (i) shall not take effect for a period of one year from the date of such decree, and if during such period the husband either appears in person before the Court or satisfies the Court through an authorised agent as to his whereabouts, the Court shall set aside the said decree;

(b) no decree shall be passed on ground (iii) until the sentence has become final; and

(c) in case of the impotency of the husband, before passing a decree on ground (v), the Court shall make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Notice to heirs of husband when his whereabouts unknown.

3. In a suit to which clause (i) of section 2 applies :—

(a) the names and addresses of the persons who would have been the heirs of the husband under Muslim Law if he had died on the date of the filing of the plaint, shall be stated in the plaint,

(b) notice of the suit shall be served on such persons, and such persons shall have the right to be heard in the suit,

Provided that the paternal uncle and the brother of the husband, if any, shall be cited as parties.



**4.** The renunciation of Islam by a married Muslim <sup>Wife's conversion to woman or her conversion to a faith other than Islam shall not by itself operate to</sup> dissolve her marriage.

Provided that it shall so operate in the case of a married Muslim woman who was converted to Islam from some other faith but who re-embraces her former faith.

## **THE JAMMU AND KASHMIR STATE AID TO INDUSTRIES ACT, 1999.**

### **Act No. XI of 1999.**

#### **CONTENTS.**

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## SECTION.

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## THE JAMMU AND KASHMIR STATE AID TO INDUSTRIES ACT, 1999.

### Act XI of 1999.

*(Received the assent of His Highness the Maharaja Bahadur on 26th October, 1942/10th Katik 1999 and published in the Government Gazette dated 3rd Poh, 1999.)*

### An Act to provide State aid to improve the condition of industries.

WHEREAS it is expedient further to improve and regulate the giving of State aid for industrial purposes; It is hereby enacted as follows :—

Preamble.

#### I. PRELIMINARY.

1. (1) This Act may be called the Jammu and Kashmir State Aid to Industries Act, 1999.

Short title and extent.

(2) It extends to the whole of Jammu and Kashmir State.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(a) "Board" means the Board of Industries constituted under section 4 of this Act.

(b) "Borrower" means an individual, company or association or body of individuals, whether incorporated or not, to whom or to which State aid has been granted under this Act.



(c) "Company" means a company as defined in the Jammu and Kashmir Companies Act, 1977.

(d) "Director" means the Director of Industries, Jammu and Kashmir.

(e) "Industry" means any industrial business or enterprise conducted or undertaken either by an individual or a company, association or body of individuals, whether incorporated or not.

(f) "Machinery" includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process.

(g) "Prescribed" means prescribed by rules made under this Act.

(h) "State subject" means a State subject of class I or class II as defined in the Judicial Department Notification No. 1—L/84 of April 1927.

## II.

**3.** (1) For carrying out the purposes of this Act, the Government shall, as soon as possible, after the commencement of this Act, establish a Board to be called the "Board of Industries" consisting of the following members, namely :—

(a) The Minister-in-charge of Industries, Jammu and Kashmir ;

(b) The Director of Industries and Commerce, Jammu and Kashmir ;

(c) The Accountant General, Jammu and Kashmir ;

(d) Three members nominated by the Government from amongst those engaged within the State in industrial occupations ;

(e) The Manager or any other representative of the Jammu and Kashmir Bank Ltd ;

(f) Three members elected by non-official members of the Jammu and Kashmir Praja Sabha from amongst themselves election being in accordance with the principle of proportional representation by means of the single transferable vote :

Provided that the Board shall have power to invite for consultation, on any particular question before it, not more than two persons specially qualified to advise on the matter in question or having special knowledge of local conditions in the area where the industry in question is situate. Any person so invited by the Board shall not have the right to vote.



(2) The Minister-in-charge of Industries shall be *ex-officio* chairman and the Director shall be *ex-officio* Secretary of the Board

(3) Five members of the Board shall form a quorum.

(4) The Board may from time to time elect for such period as it thinks fit one of its members to be the vice chairman.

(5) The chairman or in his absence the vice chairman shall preside at every meeting of the Board and shall have a second or casting vote in all cases of equality of votes.

(6) In the absence of both the chairman and the vice chairman the members present at any meeting may elect one of their members to preside, who shall have a second or casting vote in all cases of equality of votes.

4. If by such date as may be fixed by Government, the Praja Sabha does not elect a member or members as provided in section 4, the Government shall appoint a suitable person or persons, as the case may be, from amongst the non-official members of the Praja Sabha, and any person so appointed shall be deemed to be a member as if he had been duly elected by the said Praja Sabha.

5. (1) Subject to the provisions of this Act, an appointed member shall hold office for 3 years, unless the Government otherwise direct, and an elected member shall hold office for 3 years or until such time as he ceases to be a member of the body electing him, whichever is shorter.

(2) An outgoing member may, if otherwise qualified be re-elected or re-appointed.

(3) Any appointed or elected member may resign his office by giving notice in writing to the chairman of the Board.

(4) Notwithstanding the expiration of the term of three years mentioned in sub-section (1) an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled, provided no vacancy shall be allowed to remain unfilled for more than one year.

6. (1) No act of the Board shall be deemed to be invalid by reason only that the number of the members constituting the Board was at any time less than the number provided in section 3.

(2) The Government may, by notification, remove any member of the Board if he



(a) refuses to act or becomes incapable of acting as a member of the Board ;

(b) is declared insolvent by a competent Court ;

(c) is convicted of any such offence or is subjected by a criminal Court to any such order as in the opinion of the Government implies a bar to his continuance as a member of the Board ; or

(d) fails to attend four consecutive meetings of the Board without sufficient excuse.

(3) The Government may fix a period during which any person so removed under sub-section (2) (b) of this section shall not be eligible for re-appointment or re-election.

**7.** On the occurrence of a vacancy among the appointed or elected members of the Board by reason of removal, resignation or death, a new member shall be appointed by the Government to fill the vacancy.

**8.** The members of the Board and the members of the Committees which may be appointed by the Board when necessary, shall be paid remuneration and travelling allowance at the prescribed rates and on the prescribed conditions for attending meetings of the Board, or for performing any duty assigned to them by the Board for the purposes of this Act.

**9.** No member of the Board shall vote on or participate in any proceedings relating to any question coming up before the Board in the event of his having a direct or indirect pecuniary interest by himself or through his partner or in which he is interested professionally or on behalf of a client or as agent for any person other than the Government.

**EXPLANATION.**--In all such matters the decision of the chairman shall be final.

**10.** (1) The Board may make regulations consistent with this Act and the rules thereunder for the carrying out of all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power, the Board may make regulations regulating or determining all or any of the following matters, namely ;

(i) the time and place of its meeting ;

(ii) the manner in which notice of meetings shall be given ;

(iii) the conduct of proceedings at meetings ;

(iv) the division of duties among the members of the



Board ; and

(v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons.

**11.** (1) The Government may make rules consistent with this Act for carrying out all or any of its purposes.

Rule-making power,

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules for any of the following matters :—

(a) the class or classes of industrial business or enterprise to which and the purposes for which aid may be given ;

(b) the manner of making applications for State aid and the information to be given in such applications provided that no such rules shall require any applicant or grantee of aid to divulge any information relating to the technical details of any process or any patent owned by him ;

(c) the manner of conducting inquiries and the matters to be specially inquired into in dealing with applications for State aid and the powers to be exercised by the Director of Industries conducting such inquiries ;

(d) the mode of ascertaining the value of the assets of an industrial business or enterprise ; or of any property offered as collateral security for a loan.

(e) the nature and amount of the security to be taken for the due application and repayment of the State aid together with all interest due thereon and the rate of interest at which and the conditions under which State aid may be granted and the creation of a mortgage, floating charge or collateral security ;

(f) the inspection of the premises, buildings, plants and stock and the accounts of any industrial business or enterprise for which State aid has been granted ;

(g) the mode of keeping accounts and their audit and of furnishing returns of any industrial business or enterprise in respect of which State aid has been granted ;

(h) the appointment and functions of Government directors or the prescribing of other methods of control of industrial business or enterprise in respect of which State aid has been granted ;

(i) the application of profits, in cases in which the conditions under which loans or grants have been made have not been fulfilled ;

(j) the guaranteeing by His Highness' Government of cash credits, overdrafts or fixed advances by banks and the recognition of banks for this purpose ;



(k) the fixing of the period for the repayment of loans and the conditions and dates of the repayment of subsidies and grants ;

(l) the recovery of any moneys due under this Act ;

(m) the conditions under which and the security on which loans shall be granted or guarantees of a cash credit, overdraft or fixed advance with a bank given to industries ;

(n) the conditions relating to the supply of machinery by Government on hire purchase system ;

(o) rates of remuneration and T. A of members of the Board ; and

(p) the giving of preference amongst competing applicants for aid to the same industry provided that where the competition for aid is between a state subject of class I and a state subject of class II, the rules made shall give preference to the former.

Duties of the Board.

**12.** It shall be the duty of the Board :—

(1) to report to the Government after such enquiry as it may deem necessary or as may be required by this Act on an application for State aid which may be referred to it for advice by the Government ;

(2) to advise the Government on any matters that may be referred to it ;

Provided that the Board shall have power to grant aid to any one industry upto a limit of Rs. 5,000.

Provided further that all recommendations for State aid exceeding Rs. 5,000 in any one case shall be submitted by the Board of Industries to the Government for sanction.

(3) Copies of all orders passed by Government on the reports made or advice tendered by the Board as well as notes on Government industrial schemes sanctioned by Government without reference to the Board shall be placed before the Board and Government shall consider on their merits any recommendations or suggestions made by the Board in respect of the practical working of such sanctioned schemes.

### III.—GENERAL PROVISIONS REGARDING GIVING OF STATE AID.

**13** (1) The State aid which may be given to industrial business or enterprise may take one or more of the following forms:—

Forms of State Aid.

(a) granting a loan;

(b) guaranteeing the repayment of a loan advanced to the recipient of the aid by a Bank, individual or firm;

(c) paying a subsidy for the conduct of research or for



the purchase of machinery;

(d) subscribing to debentures;

(e) making a grant on favourable terms, of land, raw materials, firewood, timber, water, or any other article the ownership of which is vested in the Government;

(f) supply of machinery on the hire purchase system;

(g) imposing export duty on raw material or import duty on goods manufactured outside the State territory;

(h) exempting raw materials required for the industries from payment of customs duty;

(i) granting other facilities for the betterment of the industry or industries; or

(j) In such other manner as the Government may think fit.

(2) (i) No State aid shall be given to any individual or firm unless he or they are State subjects;

(ii) No State aid shall be given to any Joint Stock Company unless the Company is registered in the State with a rupee capital and has a majority of State subjects on its Board of Directors as well as on the list of share-holders.

Provided that in the case of Joint Stock Companies with a rupee capital of over two lacs where the Board decides by a vote of the majority that aid may be given to any particular industry in accordance with this Act, State aid may be granted without regard to the conditions hereinbefore stated in this section.

Nothing contained in sub-section (2) shall be a bar to the grant of aid to those companies declared as State subjects under order No. 98-H/39 issued in the Government Gazette of 27th Poh 1956.

Notwithstanding anything contained in the provisions of this Act, the Government reserves to itself the power to grant aid to any industry in any form.

**14** Application for State aid shall be made to the Director in such form and shall contain such information as may be prescribed.

Provided that neither the applicant nor the grantee of aid shall be required to divulge any information relating to the technical details of any process or any patent owned by him.

**15.** Every recipient of aid under this Act shall make provision for the training of State subject apprentices as the Government may from time to time prescribe.



#### IV. PROVISIONS REGULATING THE GIVING OF STATE AID OTHERWISE THAN BY THE SUPPLY OF MACHINERY ON THE HIRE PURCHASE SYSTEM.

**16.** On the receipt of an application for State aid, the  
Verification by Direc- Director shall verify through the Revenue  
tor. Department or other agency the facts  
 stated therein. All such applications shall be placed by him  
 with the report of the Department or other authorities along  
 with his views before the Board for its consideration in the  
 order of their receipt.

**17.** (1) When an application for a loan has been  
Security for repayment. accepted, the applicant shall execute a  
 deed in the prescribed form undertaking  
 to apply the money lent solely to the purpose or purposes for  
 which and fulfil the conditions on which the loan was granted,  
 and rendering himself and such property as may have been  
 specified in the deed as security, and, in the event of that  
 property being found insufficient his whole property then  
 existing or acquired in future liable for the repayment of the  
 loan with interest and costs, if any, incurred in advancing or  
 recovering the loan or loans.

(2) When the application has been made by a firm or  
 company the deed be executed by a duly authorised repre-  
 sentative thereof, and the deed shall thereupon be deemed  
 binding on all the members of the said firm or company  
 jointly and severally and the property of the said firm or  
 company shall be liable for the repayment of the loan in the  
 same manner as if the loan had been granted to an  
 individual.

(3) Notwithstanding anything contained in the Stamp  
 and Registration Acts, all mortgage deeds executed in favour  
 of the Government under the provisions of the Act shall be  
 executed on a stamp paper of the value of Re. 1 and shall  
 be registered without payment of any registration fee.

**18.** The amount of loan granted under this Act shall  
Limit of Loan, not exceed fifty per cent of the net value  
 of the unencumbered assets accepted as  
 security.

**19.** Every loan granted under this Act together with  
Recovery of dues. all interest due thereon if any, shall  
 be repayable either in a lump sum or by  
 instalments as may be provided for in the deed executed  
 by the borrower under section 17 of this Act, provided that  
 the period fixed for the repayment of such loan shall not  
 exceed 20 year.



**20.** (1) When any loan or instalment or interest thereon falls due and is not paid on or before the due date or when a loan has been declared immediately repayable under section 25, the Director may cause a notice to be served on the borrower in the prescribed form calling upon him to pay the sums due within such time as may be fixed therein.

Notice to pay.

(2) Such notice shall contain intimation that in case of default the said officer will issue a declaration in the prescribed form showing the amount of the debt due and the property mentioned in the deed as liable to satisfy the same.

**21.** If within the time so fixed the sums due are not paid the Director shall issue the declaration as described in subsection (2) of section 20 and such declaration shall be published in the Gazette.

Effect of declaration.

(2) Such declaration shall be conclusive evidence of its contents, and shall not be called into question in any Court or before any revenue authority by the borrower, his heirs legal representatives or assigns.

**22.** All moneys payable under this Act including any interest chargeable thereon and the cost, if any, incurred if not paid when due, may be recovered from the borrower and his surety if any under the law for the time being in force, as if they were arrears of land revenue.

Execution of declaration.

**23.** On the receipt of a declaration made under section 20 any Revenue officer to whom the declaration has been forwarded shall immediately proceed to recover the sums due in the manner provided for the recovery of arrears of land revenue.

Recovery of sums due.

**24.** The Board or their representatives shall have free access for the inspection of the premises, buildings, plants, stock and all accounts relative to the industry.

Inspection by the Board.

**25.** In any case in which and any application for a loan has been made under this Act, the applicant, and at any time during the currency of a loan that has been granted, the borrower shall be bound:—

Inspection of returns.

(a) to comply with any general or special order of the Director relating to the inspection of the premises, buildings, machinery and stock in hand of the industry;

(b) to permit inspection of all accounts relative to the industry;

(c) to furnish complete returns of all products,



manufactured or sold, both as regards description and quantity;

(d) to maintain such special accounts and to furnish such statements as the Director may from time to time require; and

(e) to submit the accounts of the industry to such audit as the Director may prescribe.

**Penalty for default in applying the loan** **26.** If the Director, after any inspection provided for in section 25 is satisfied that the money lent is not being applied to the purpose or purposes for which the loan was granted or that the conditions on which the loan was granted are not duly fulfilled, he may declare, notwithstanding anything contained in the deed executed under section 17 of this Act that the loan is immediately repayable and shall give notice of such declaration to the borrower.

**27.** If at any time during the currency of the loan, the value of the security falls below the outstanding balance of the loan, the Director may either proceed to recover in the manner laid down in sections 20, 21, 22, and 23 so much of such balance as is not adequately covered by the then existing value of the security or accept such additional or collateral security as he may deem sufficient.

**28.** If the borrower fails to comply with any order under clause (a) of section 25 or does not permit or obstructs the inspection of the accounts relative to the industry, or makes default in respect of any of the particulars specified in clauses (c), (d) (e) of the said section or if the borrower disposes of any profits in contravention of the provisions of section 29 of this Act, the Director may, after considering any representation the borrower may make, within such time, as may be fixed by him, proceed to recover the loan in the manner prescribed by this Act.

**29.** No borrower shall pay any dividend or distribute or take any profits in excess of such rate or percentage upon the paid up capital of the industry as the Government may from time to time fix, until the conditions on which the State aid has been granted are fulfilled.

**Disposal of profits when conditions on which State aid is given are not fulfilled,**

**30.** Notwithstanding anything contained in this Act, the Government may, by the appointment of their own Directors or otherwise, exercise such control over the conduct of the industry to which State aid has been given as shall suffice in their opinion to safeguard their interests, provided that such right has been expressly

**Government Directors.**



reserved by agreement at the time the aid was granted.

### V.—SUPPLEMENTAL

**31.** (1) The decision of the Government as to whether the conditions laid down in or under any provisions of this Act have been satisfied or violated shall be final and no suit shall be brought in any civil Court to set aside or modify any order made thereunder.

(2) No prosecution, suit or other proceeding shall lie against any Government officer or other authority invested with powers under this Act for anything done or intended to be done by him in good faith in the performance of his duties as such Government servant or authority.

**32.** The Jammu and Kashmir State Aid to Industries Act No. 9 of 1992 is hereby repealed, but all acts done, aid given, agreements made, orders passed and rules issued under the said Act shall remain in force unless expressly or impliedly cancelled by competent authority and shall be deemed to have been respectively done, given, made, passed and issued under this Act.

## THE JAMMU AND KASHMIR VILLAGE PANCHAYATS (VALIDATION) ACT, 1999.

Act No. XIII of 1999.

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#### PREAMBLE.

#### SECTIONS.

1. Short title, extent and commencement.

2. Jammu and Kashmir village Panchayat Act, 1992 (I of

#### SECTIONS.

1992) to apply retrospectively in certain Tehsils.

Schedule.



# THE JAMMU AND KASHMIR VILLAGE PANCHAYATS (Validation) ACT, 1999.

**Act, No. XIII of 1999.**

*Sanctioned by His Highness the Maharaja Bahadur and published in the Government Gazette dated 7th Phagon 1999.*

**An Act to validate acts done and proceedings taken by certain Panchayats in the Provinces of Jammu and Kashmir.**

WHEREAS provision is made in Section 2 of the Jammu and Kashmir Village Panchayats Act, 1992, that the said Act shall come into operation on such date as His Highness' Government may, in respect of any Tehsil or part of a Tehsil, by notification direct;

And whereas the said Act has been enforced in the Tehsils specified in Column 1 of the schedule annexed hereto with effect from the dates specified in the corresponding entry of column 2 thereof, without the previous publication of a notification in this behalf under section 2 of the said Act;

And whereas panchayats established in these Tehsils have been functioning in good faith but without lawful authority;

And whereas acts done and proceedings taken by these panchayats are likely to be called in question;

And whereas it is expedient to validate all acts done and proceedings taken by such panchayats,

We are hereby pleased to enact as follows :—

1. (1) This Act may be called the Village Panchayats, (Validation) Act, 1999.

(2) It shall extend to the whole of the Jammu and Kashmir State.

(3) It shall come into force at once.

Jammu and Kashmir village Panchayat Act 1992 (1 of 1992) to apply retrospectively in certain Tehsil

2. The Jammu and Kashmir village Panchayats Act, 1992 shall be deemed to have come into operation in the Tehsils mentioned in column 1 of the schedule annexed hereto with effect from the dates specified in the corresponding entry of column 2 thereof, and all acts done and proceedings taken by the panchayats established in such Tehsils shall have validity and effect as if the said Act had come into operation in these Tehsils from the dates specified against each of



them after the previous publication of a notification by the Government under section 2 of the said Act.

SCHEDULE.

Kulgam	...	...	...	15th Octobr 1937.
				<u>30th Assuj 1994.</u>
Badgam Tehsil	...	...	...	7th August 1937.
				<u>23rd Sawan 1994.</u>
Kathua Tehsil ...	...	...	...	14th January 1938.
				<u>2nd Magh 1994.</u>
Jasmergarh Tehsil	...	...	...	14th January 1938.
				<u>2nd Magh 1994.</u>
Basohli Tehsil	...	...	...	14th January 1938.
				<u>2nd Magh 1994.</u>
Reasi Tehsil	...	...	...	31st October 1939.
				<u>15th Katik 1996.</u>
Rampur Rajouri Tehsil	..	...	...	1st July 1941.
				<u>10th Har 19998.</u>





B. N. DAK, B. A. LL. B.

Vakil High Court,

SRINAGAR (Kashmir)



**SEEDAR, B. A. LL. B.,**  
**Judge High Court,**  
**SRINAGAR (Kashmir)**







# LAWS OF JAMMU AND KASHMIR.

(Being a collection of all the enactments whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State.)

## SUPPLEMENT 2000.



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*18*  
**Prefaratory Note.**

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Supplement for S. 2000 to the Laws of Jammu and Kashmir is published to make the laws up-to-date. It contains all the Acts of Samvat year 2000. It is proposed to issue every year an annual supplement until a revised edition of the Laws of Jammu and Kashmir is published.

Correction slips for every year issued by the Law Department are supplied by the Press on moderate price.

(Sd.) BADRI NATH,

*Deputy Legal Remembrancer.*

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## Alphabetical list of Acts incorporated in this volume.

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1801-1802 (Part II) Act (VII of 1801)

1801-1802 (Part III) Act (VIII of 1801)

1801-1802 (Part IV) Act (IX of 1801)

1801-1802 (Part V) Act (X of 1801)

1801-1802 (Part VI) Act (XI of 1801)

1801-1802 (Part VII) Act (XII of 1801)



**THE JAMMU AND KASHMIR SUGAR  
(EXCISE DUTY) ACT, 2000.**

**Act No. VI of 2000.**

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*Preamble.*

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1. Short title and extent.
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3. Imposition of duty on sugar.
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6. Penalty for issue of sugar from factory in contravention of section 5.

**SECTION.**

7. Penalty for evasion of duty or failure to supply information.
8. Power of courts to order forfeiture of sugar.
9. Application of the provisions of Customs Act to the duty on sugar.
10. Power of Government to make rules.

**THE JAMMU AND KASHMIR SUGAR (EXCISE DUTY)  
ACT, 2000.**

**Act No. VI of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 21st Sawan 2000/5th August 1943.]*

**An Act to provide for the imposition and collection of excise duty on sugar.**

WHEREAS it is expedient to impose an Excise Duty on sugar produced in factories and to provide for the collection thereof ; It is hereby enacted as follows :—

1. (I) This Act may be called the Jammu and Kashmir Sugar (Excise Duty) Act, 2000.  
Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.



(3) The Act shall come into force on such date as the Government may by notification in the Government Gazette appoint in this behalf.

**2.** In this Act unless there is anything repugnant in the subject or context,—  
Definitions.

(a) “factory” means any premises in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power ;

(b) “owner” includes any person expressly or impliedly authorised by the owner of a factory to be his agent in respect of such factory ;

(c) “sugar” means any form of sugar containing more than ninety per cent of sucrose ;

(d) “khandsari sugar” means sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed ; and

(e) “palmyra sugar” means sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm.

**3.** (1) A duty of excise shall be levied on all sugar produced in any factory in the State and either issued out of such factory on or after the day of coming into force of this Act, or used within such factory on or after the said date in the manufacture of any commodity other than sugar, and shall be payable by the owner of the factory.

(2) The duty payable under sub-section (1) shall be at the following rates, namely :—

(i) on khandsari sugar at the rate of two rupees and twelve annas per maund ;

(ii) on all other sugar except palmyra sugar at the rate of three rupees and four annas per maund ;

(iii) on palmyra sugar at such rate, if any, as may be fixed in this behalf by the Government after such enquiry as they may think fit.

**4.** (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding double the amount of duty unpaid which such authority may in its discretion think it reasonable to require.

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of



land revenue and shall be recoverable in addition to, and not in substitution for, any other penalty incurred under this Act.

**5.** No person shall issue any sugar out of a factory except in accordance with the provisions of rules made in that behalf under this Act, or, until such rules are made in accordance with the general or special orders of the Government.

Issue of sugar from factory.

**6.** Whoever contravenes the provisions of section 5 shall be punishable with fine which may extend to two thousand rupees.

Penalty for issue of sugar from factory in contravention of section 5

**7.** Whoever evades or attempts to evade the payment of any duty payable by him under this Act, or fails to supply any information which he is required by any rule made under this Act to supply, or knowingly supplies false information, shall be punishable with imprisonment, which may extend to six months or with fine which may extend to two thousand rupees, or with both.

Penalty for evasion of duty or failure to supply information.

**8.** Any Court trying an offence under this Act may order that any sugar, together with the packages or coverings thereof, in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Highness the Maharaja Bahadur.

Power of Court to order forfeiture of sugar

**9.** The Government may, by notification in the Government Gazette, declare that any of the provisions of the Jammu and Kashmir Customs Act, 1958 relating to the levy of and exemption from customs duties, drawback of duty, warehousing offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adopt them to the circumstances, be applicable in regard to like matters in respect of the duty on sugar imposed by section 3.

Application of the provisions of Customs Act to the duty on sugar.

**10.** (1) The Government may by notification in the Government Gazette, make rules to carry into effect the purposes and objects of this Act.

Power of Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment



the manner in which the duty shall be payable, and the recovery of arrears ;

(b) regulate the issue of sugar out of or the use of sugar in the manufacture of commodities within any factory and provide for the appointment of officers of the State to supervise within any factory such issue or use ;

(c) impose on the owners of factories, and on persons engaged in the sale of sugar, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified ;

(d) provide for the detention of sugar for the purpose of exacting the duty, the confiscation otherwise than under section 8 of sugar in respect of which breaches of the Act or rules have been committed and the disposal of sugar so detained or confiscated ;

(e) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of sugar ; and

(f) authorise and regulate the composition of offences against or liabilities incurred under the Act and rules.

(3) In making any rule under this section the Government may provide that a breach of the rules shall, where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees.

## **THE WORKMEN'S COMPENSATION ACT, 2000.**

### **Act No. VII of 2000.**

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**THE WORKMEN'S COMPENSATION ACT, 2000.****Act No. VII of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 28th Sawan 2000/12th August 1943.]*

**An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.**

Preamble. WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; It is hereby enacted as follows:—

**CHAPTER I.****PRELIMINARY.**

1. (I) This Act may be called the Workmen's Compensation Act, 2000.

Short title

(2) It extends to the whole of the Jammu and Kashmir State.

Extent.

2. (I) In this Act unless there is anything repugnant in the subject or context:—

Definitions.

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of 15 years;

(b) "commissioner" means a commissioner appointed for workmen's compensation under section 20;

(c) "compensation" means compensation as provided for by this Act;

(d) "dependant" means any of the following relatives of a deceased workman, namely,—

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly or in part dependent on the earnings of the workman at the time of his death, a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter



in-law, a minor child of a deceased son, a minor child of a deceased daughter where no parent of the child is alive, or where no parent of the workman is alive a paternal grandparent ;

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into contract of service or apprenticeship means such other person while the workman is working for him ;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager sub-ordinate to an employer ;

(g) "partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time ; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement ;

(h) "prescribed" means prescribed by rules made under this Act ;

(i) "qualified medical practitioner" means any person registered under the Jammu and Kashmir Medical Registration Act, 1998 ;

(j) "total disablement" means such disablement whether of a permanent or of a temporary nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement ; provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity, as specified in that schedule against those injuries, amounts to one hundred per cent ;

(k) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman



to cover any special expenses entailed on him by the nature of his employment ;

(1) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is on monthly wages not exceeding one hundred rupees in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of His Highness' Forces and any reference to a workman who has been injured shall, when the workman is dead, include a reference to his dependents, or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government, shall for the purposes of this Act, unless a contrary intention appears be deemed to be the trade or business of such authority or department.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may by a like notification add to Schedule II any class of persons employed in any occupation which they are satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply to such class of persons :

Provided that in making such addition the Government may direct that the provisions of this Act shall apply to such classes of persons for specified injuries only.

## CHAPTER II.

### WORKMEN'S COMPENSATION.

**3.** (1) If personal injury is caused to a workman by  
Employer's liability for compensation. accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter, provided that the employer shall not be so liable :—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days ;

(b) in respect of any injury not resulting in death caused by an accident which is directly attributable to :—

(i) the workman having been at the time thereof



- under the influence of drink or a drug, or
- (ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) If a workman employed in any employment specified in part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

*Explanation.*—For the purpose of this sub-section, a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided in sub-sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other



person ; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury :—

(a) if he has instituted a claim to compensation in respect of the injury before a commissioner ; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

4. (1) Subject to the provisions of this Act the amount of compensation shall be as follows, viz :—

A. where death results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor—two hundred rupees.

B. Where permanent total disablement results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(ii) in the case of a minor—twelve hundred rupees.

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury ; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

*Explanation.*—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which should have been payable if permanent total disablement has resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the 16th day after the expiry of a waiting period of seven days from the date of the disablement, and there-



after half-monthly during the disablement or during a period of five years, whichever period is shorter—

- (i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III of the sum shown against such limits in the fourth column thereof, and
- (ii) in the case of a minor of one-half of his monthly wages subject to a maximum of thirty rupees:

Provided that (a) there shall be deducted from any lump-sum or half monthly payments to which the workman is entitled, the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump-sum or of the first half-monthly payment, as the case may be, and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half month a sum proportionate to the duration of the disablement in that half month.

**5.** For the purposes of this Act the monthly wages of a workman shall be calculated as follows, namely:—

Method of calculating wages.

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of a workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or if there was no workman so employed, by a workman employed on similar work in the same locality;

(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous



period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

*Explanation.*—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

**6.** (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a commissioner may be reviewed by the commissioner, on the application of either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

Review.

(2) Any half-monthly payment may, on review under this section subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lumpsum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

**7.** Any right to receive half-monthly payments may, by agreement between the parties, or if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the commissioner, as the case may be.

Commutation of half-monthly payment.

**8.** (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Distribution of compensation.

Provided that, in the case of a deceased workman an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependent, shall be deducted by the commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees



which is payable as compensation may be deposited with the commissioner on behalf of the person entitled thereto.

(3) The receipt of the commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the commissioner shall deduct therefrom the actual costs of the workman's funeral expenses to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred and shall, if he thinks necessary, cause notice to be published or to be served on each dependent in such manner as he thinks fit calling upon the dependents to appear before him, personally or through some attorney, or for determining the distribution of compensation. If the commissioner is satisfied, after any inquiry which he may deem necessary that no dependent exists he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application, by the employer, furnish a statement showing in details all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependents of the deceased workman or any of them in such proportion as the commissioner thinks fit or may in the discretion of the commissioner be allotted to any one dependent.

(6) When any compensation deposited with the commissioner is payable to any person, the commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump-sum deposited with the commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability the commissioner may of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependent of the workman or to any other person whom the commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or any



other sufficient cause, an order of commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with ought to be varied the commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependent of any sum already paid to him.

(9) Where the commissioner varies any order under sub-section (8) by reason of the facts that payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

**9.** Save as provided by this Act, no lump-sum of half-monthly payment under this Act shall in Compensation not to be assigned, attached or charged. any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

**10.** (1) No claim for compensation shall be entertained by a commissioner unless notice of the accident has been given, in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within one year of the occurrence of the accident or, in case of death within one year from the date of death :

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided further that the want of or any defect, or irregularity in a notice shall not be a bar to the entertainment of a claim--

(a) if a claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the



workman died on such premises or at such place or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of the several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further, that the commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to injured workman employed on the premises and to any person acting *bonafide* on his behalf.

(4) A notice under this section may be served by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served, or where a notice book is maintained by entry in the notice book.

**11.** (1) Where a commissioner receives information from

Power to require from employers statements regarding fatal accident

any source that a workman has died as a result of an accident arising out of and in the course of his employment he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation he shall make the deposit within thirty days of the service of notice.



(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the commissioner after such inquiry as he may think fit, may inform any of the dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may think fit.

**12.** (1) Where, by any law for the time being in force, <sup>Report of fatal ac-</sup> notice is required to be given to any <sup>cidents.</sup> authority by or on behalf of the employer, of any accident occurring on his premises which result in death, the person required to give the notice shall, within seven days of the death, send a report to the commissioner giving the circumstances attending the death :

Provided that where the Government has so prescribed the person required to give the notice may instead of sending such report to the commissioner send it to the authority to whom he is required to give the notice.

(2) The Government may, by notification in the Government Gazette, extend the provisions of sub-section (1) to any class or premises other than those coming within the scope of that sub-section and may, by such notification, specify the persons who shall send the report to the commissioner.

**13.** (1) Where a workman has given notice of an accident, <sup>Medical examination.</sup> he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.



(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leave without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman whose right to compensation has been suspended under sub-section (2) or sub-section (3) dies without having submitted himself for medical examination as required by either of those sub-sections, the commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed and compensation if any shall be payable accordingly.

**14.** (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that

Contracting.



workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes as the case may be, to execute the work or which are otherwise under his control or management.

**15.** Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

**16.** (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon



any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer so however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia) the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurer of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under order 21-A of the Jammu and Kashmir Code of Civil Procedure or under section 230 of the Companies Act, 1977, or in the distribution of the property of an insolvent or in the distribution of the assets of the company being wound up to be paid in priority to all other debts, the amounts due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof, shall for the purposes of this section, be taken to be the amount of the lump-sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound



up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

**17.** The Government may by notification in the Government Gazette, direct that every person employing workmen or that any specified class of such persons shall send at such time and in such form and to such authority, as may be specified in the notification a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the Government may direct.

**18.** Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

**19.** Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory a valid certificate granted in respect of such person under section 10 or section 44 of the Jammu and Kashmir Factories Act, 1999 before the occurrence of the injury shall be conclusive proof of the age of such person.

**20.** (1) Whoever—  
 (a) fails to maintain a notice book which he is required to maintain under sub-section (3) of section 10, or  
 (b) fails to send to the commissioner a statement which he is required to send under sub-section (1) of section 11, or  
 (c) fails to send a report which he is required to send under section 12, or  
 (d) fails to make a return which he is required to make under section 17 shall be punished with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a commissioner, and no Court shall take cognisance of any offence under this section unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.



## CHAPTER III.

## COMMISSIONERS.

**21.** (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a commissioner or to enforce any liability incurred under this Act.

**22.** (1) The Government may, by notification in the Government Gazette, appoint any person to be a commissioner for workmen's compensation for such local area as may be specified in the notification.

(2) Where more than one commissioner has been appointed for any local area the Government may, by general or special order, regulate the distribution of business between them.

(3) Any commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, chose one or more persons possessing special knowledge of any matter relevant to the matter under enquiry to assist him in holding the enquiry.

(4) Every commissioner shall be deemed to be a public servant within the meaning of the Ranbir Penal Code.

**23.** Where any matter is under this Act to be done by or before a commissioner the same shall, subject to the provisions of this Act, and to any rules made hereunder, be done by or before a commissioner for the local area in which the accident took place which resulted in the injury.

(2) If a commissioner is satisfied that any matter arising out of the proceedings, pending before him can be more conveniently dealt with by any other commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other



commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings :

Provided that the commissioner shall not, where any party to the proceeding has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard :

Provided further, that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump-sum shall be transferred for disposal under this sub-section to a commissioner save with the previous sanction of the Government unless all the parties to the proceedings agree to the transfer.

(3) The commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and if the matter was transferred for report return his report thereon or, if the matter was transferred for disposal continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a commissioner to whom any matter has been transferred for report under sub-section (2), the commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The Government may transfer any matter from any commissioner appointed by them to any other commissioner appointed by them.

**24.** (1) No application for the settlement of any matter by a commissioner other than an application by a dependent or dependents for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain in addition to any particulars which may be prescribed, the following particulars namely:—

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the



employer and if such notice has not been served or has not been served in due time, the reasons for such omission ;

(c) the names and the addresses of the parties ; and

(d) except in the case of an application by dependents for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the commissioner.

**25.** (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the commissioner such sum is insufficient, the commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the commissioner, the commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

**26.** The commissioner shall have all the powers of a civil Court under the Code of Civil Procedure, 1977 for the purpose of taking evidence on oath which such commissioner is hereby empowered to impose and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the commissioner shall be deemed to be a civil Court for all the purposes of section 195 and chapter XXXV of the Code of Criminal Procedure, 1989.

**27.** Any appearance, application or act required to be made or done by any person before or to a commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company, or with the permission of the commissioner by any other persons so authorised.

**28.** The commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed



by the commissioner with his own hand and shall form part of the record:

Provided that, if the commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record: Provided further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

**29.** All costs incidental to any proceedings before a commissioner shall, subject to rules made under this Act, be in the discretion of the commissioner.

**30.** A commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so shall decide the question in conformity with such decision.

**31.** (1) Where the amount of any lump-sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the commissioner, who shall on being satisfied as to its genuineness record the memorandum in a register in the prescribed manner:

Provided that—

(a) no such memorandum shall be recorded before seven days after communication by the commissioner of notice to the parties concerned;

(b) the commissioner may at any time rectify the register;

(c) where it appears to the commissioner that an agreement as to the payment of a lump-sum whether by way of redemption of a half-monthly payment or otherwise or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything



contained in the Jammu and Kashmir Contract Act, 1977 or in any other law for the time being in force.

**32.** Where a memorandum of any agreement, the Effect of failure to register agreement. registration of which is required by section 31 is not sent to the commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

**33.** (1) An appeal shall lie to the High Court from the following orders of a commissioner, Appeal namely :—

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ;

(b) an order refusing to allow redemption of a half-monthly payment ;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 14, or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further, that no appeal shall lie in any case in which the parties have agreed to abide by that decision of the commissioner, or in which the order of the commissioner gives effect to an agreement come to by the parties. Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.



(2) The period of limitation for an appeal under this section shall be ninety days.

(3) The provisions of section 5 of the Jammu and Kashmir Limitation Act, 1995 shall be applicable to appeals under this section.

**34.** Where an employer makes an appeal under clause (a) of sub-section (1) of section 33 the commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

**35.** Any amount payable by any person under this Act whether under an agreement for the payment of compensation or otherwise may be recovered as an arrear of land revenue.

## CHAPTER IV.

### RULES.

**36.** (1) The Government may make rules to carry out the purposes of this Act.

Powers of the Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (1) of section 13;

(c) for prescribing the procedure to be followed by commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a commissioner may be invested for the benefit of dependents of a deceased workman and for the transfer of money so invested from one commissioner to another;



(f) for the representation in proceedings before commissioners of parties who are minors or are unable to make an appearance ;

(g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;

(h) for withholding by commissioners whether in whole or in part of half-monthly payments pending decision on applications for review of the same ;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act ;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a commissioner under this Act ;

(k) for the maintenance by commissioners of registers and records of proceedings before them ;

(l) for prescribing the classes of employers who shall maintain notice books under sub-section 3 of section 10 and the form of such notice books ;

(m) for prescribing the form of statement to be submitted by employers under section 11 ; and

(n) for prescribing the cases in which the report referred to in section 12 may be sent to an authority other than the commissioner.

**37.** (1) The power to make rules conferred by section 36 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with section 23 of the Jammu and Kashmir General Clauses Act, 1977, as that after which a draft of rules proposed to be made under section 36 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Government Gazette and on such publication shall have effect as if enacted in this Act.

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**Workmen's Compensation.****SCHEDULE I.**

[See sections 2 (1) and (4)]

*List of injuries deemed to result in permanent partial disablement.*

Injury.	Percent- age of loss of earning capacity.
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

**SCHEDULE II.**

[See section 2 (1) (l)]

*List of persons who, subject to the provisions of section 2 (1) (l), are included in the definition of workmen.*

The following persons are workmen within the meaning of section 2 (1) (l) and subject to the provisions of that section, that is to say, any person who is—

1. (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity, or



(ii) employed otherwise than in a clerical capacity in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (g) of section 2 of the Jammu and Kashmir Factories Act, 1999, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty, or more persons have been so employed; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed; or

(v) employed in any mine, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground;

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause; or

(vi) employed in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twenty feet or more in height from lowest to its highest point; or

(c) any road, bridge, or tunnel; or

(vii) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same; or

(viii) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer; or



- (ix) employed in the service of any fire brigade ; or
- (x) employed upon a railway either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ; or
- (xi) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas ; or
- (xii) employed in any occupation involving blasting operations ; or
- (xiii) employed, in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet ; or
- (xiv) employed in the operation of any ferry boat capable of carrying more than ten persons ; or
- (xv) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed ; or
- (xvi) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ; or
- (xvii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or
- (xviii) employed in the training or keeping of wild animals ; or
- (xix) employed in lopping, felling or logging of trees, or the transport of timber by inland waters or the control or extinguishing of forest fires ; or
- (xx) employed in operations for the catching or hunting of wild animals ; or
- (xxi) employed in the handling or transport of goods in, or within the precincts of—
  - (a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed ; or
  - (b) any market in which on any one day of the preceding twelve months one hundred or more persons have been so employed ;
- (xxii) employed on the collection of fruits from trees exceeding twenty-five feet in height.



EXPLANATION.—In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

### SCHEDULE III.

(See section 3)

#### *List of occupational diseases.*

##### PART A.

Anthrax	Any employment— (a) involving the handling of wool, hair, bristles, or animal carcasses, or the parts of such carcasses including hides, hoofs] and horns ; or (b) in connection with animals infected with Anthrax ; or (c) involving the loading, unloading or transport of any merchandise.
Compressed air illness or its sequele.	Any process carried on in compressed air.
Poisoning by lead tetra-ethyl	... Any process involving the use of lead tetra-ethyl.
Poisoning by nitrous fumes	... Any process involving exposure to nitrous fumes.

##### PART B.

Lead poisoning or its sequele, excluding poisoning by lead tetra-ethyl.	Any process involving the use of lead or any of its preparations or compounds except lead tetra-ethyl.
Phosphorous poisoning or its sequele.	Any process involving the use of phosphorous or its preparations or compounds.
Mercury poisoning or its sequele.	Any process involving the use of mercury or its preparations or compound.
Poisoning by benzene and its homologues, or the sequele of such poisoning.	Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.
Chrome ulceration or its sequele	... Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.



Arsenical poisoning or its sequelae ...	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological manifestations due to— (a) radium and other radioactive substances, (b) X-rays.	Any process involving exposure to the action of radium, radio active substances or X-rays.
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen mineral oil, paraffin, or the compounds, productse or residues of these substances.



**Workmens' Compensation.****SCHEDULE IV.**

(See section 4)

*Compensation payable in certain cases.**Amount of compensation for*Half-monthly  
payment as  
compensationMonthly wages of  
the workman  
injured.Permanent for temporary  
Death of total disable-  
ment of adult.  
adult.disablement  
of adult.

I

2

3

4

More than. But not  
more than.

Rs.

Rs.

Rs.

Rs.

Rs. as.  
Half his month-  
ly wages.

5	10	250	350		
10	15	275	385	5	0
15	18	300	420	6	0
18	21	315	441	7	0
21	24	360	504	8	0
24	27	405	567	8	8
27	30	450	630	9	0
30	35	525	735	9	8
35	40	600	840	10	0
40	45	675	945	11	4
45	50	750	1,050	12	8
50	60	900	1,260	15	0
60	70	1,050	2,470	17	8
70	80	1,200	1,680	20	0
80	100	1,500	2,100	25	0
100	200	1,750	2,450	30	0
200	.....	2,000	2,800	30	0



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

Act No. VIII of 2000.

## CONTENTS.

### *Preamble.*

SECTION.	SECTION.
1. Short title and extent.	10. Power of the Collector to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the Government.
2. Definition.	
<i>Notification and Regulation of Areas.</i>	<i>Bar of Compensation for acts done under Sections 8, 9 and 10.</i>
3 Notification of Areas.	11. Bar of action.
4. Power to regulate, restrict or prohibit by general or special order within notified area certain matters.	<i>Power to enter upon and delimit Notified Area and Beds.</i>
5. Power in certain case to regulate, restrict or prohibit special order within notified areas, certain further matters.	12. Power to enter upon, survey and demarcate local areas notified under section 3 or 8.
6. Necessity for regulation, restriction or prohibition to be recited in the order under section 4 or 5. Publication of order.	<i>Inquiry into claims and award of compensation.</i>
7. Proclamation of regulations, restrictions and prohibitions and admission of claims of compensation for rights which are restricted or extinguished.	13. Inquiries into claims and award thereupon.
<i>Control over the Beds of Khuds and Nallahs.</i>	14. Method of awarding compensation and effect of such award
8. Action when Government considers it desirable to take measures to regulate the beds of Khuds and Nallahs. Vesting of such beds in the Government.	<i>Procedure, Records and Appeals.</i>
9. Effect of notification to suspend or extinguish private rights in the area notified under section 8.	15. Record of right in respect of notified areas.
	16. Mode of proclaiming notification and of serving notices, orders and processes issued under the Act.
	17. Appeal, review and revision.
	18. Penalty for offences.
	19. Bar of suits.
	20. Power to make rules.



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

## Act No. VIII of 2000

*[Received assent of His Highness the Maharaja Bahadur on 2nd June 1943/20th Jeth 2000 and published in the Government Gazette dated 1st Bhadon 2000/17th August 1943.]*

### An Act to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State.

WHEREAS it is expedient to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State situate within or adjacent to the mountain ranges or affected or liable to be affected by the debodisement of forests within those ranges, or by the action of streams and torrents, such as are commonly called *Khuds* and *Nallahs* flowing through or from them ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Land Preservation Act, 2000.

Short title and extent.

(2) It shall extend to the whole of the State.

2. In this Act, unless a different intention appears from the subject or context,—

Definitions.

(a) "Collector" includes any revenue officer, not lower in rank than an Assistant Collector of the first class specially appointed by the Government to perform the functions of a Collector under this Act ;

(b) "*Khud*" or "*Nallah*" means a stream or torrent flowing through or from mountain range ;

(c) "land" means land within any local area preserved and protected or otherwise dealt with in manner provided in this Act, and includes benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth ;

(d) "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act ; and

(e) the words "tree", "timber", "forest produce" and "cattle" respectively, shall have the meanings severally assigned to them in the Jammu and Kashmir Forest Act, 1987.



## NOTIFICATION AND REGULATION OF AREAS.

**3.** Whenever it appears to the Government that it is desirable to provide for the better preservation and protection of any local area, situate within or adjacent to any mountain range or affected or liable to be affected by the debodisement of forests in that range or by the action of *Khuds* and *Nallahs* they may, by notification in the Government Gazette, make a direction accordingly.

**4.** In respect of areas notified under section 3 generally or the whole or any part of any such area, the Government may by general or special order, temporarily regulate, restrict or prohibit—

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone, or the burning of lime or the making of bricks at places, where such stone or lime or bricks had not ordinarily been so quarried or burnt or made prior to the publication of notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce other than grass save for *bonafide* domestic or agricultural purposes ;

(d) the setting on fire of trees, timber or forest produce ;

(e) the admission, herding,, pasturing or retention of sheep and goats ;

(f) the examination of forest produce passing out of any such area ; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area to take any trees, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons.

**5.** In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the Government may by special order temporarily regulate, restrict or prohibit—



(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone or the burning of lime or the making of bricks at places where such stone or lime or bricks had ordinarily been so quarried or burnt or made prior to the publication of the notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce for any purposes ; and

(d) the admission, herding, pasturing or retention of cattle generally, other than sheep and goats, or of any class or description of such cattle.

EXPLANATION.—For the purposes of clause (b) of section 4 and clause (b) of this section, the word “making” includes “burning”.

6. Every order under section 4 or 5 shall be published in the Government Gazette and shall set forth that the Government are satisfied, after due inquiry and consideration, of objections as may have been preferred that the regulations, restrictions or prohibitions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

7. (I) When in respect of any local area a notification has been published under section 3 ; and,

Necessity for regulation, restriction or prohibition to be recited in the order under section 4 or 5  
Publication of order.

(a) upon such publication any general order made under section 4 becomes applicable to such area ; or

(b) any special order under section 4 or section 5, is made in respect of such area, the Collector shall cause public notice of the provisions of such general or special order to be given and, if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof fixing a period of not less

Proclamation of regulations, restrictions and prohibitions and admission of claims of compensation for rights which are restricted or extinguished.



than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1) shall be rejected :

Provided that if the claimant satisfies the Collector that he had sufficient cause for not preferring the claim within time, the Collector may admit any such claim as if it had been made within such period.

#### CONTROL OVER THE BEDS OF KHUDS AND NALLAHS.

8. (1) Whenever after due enquiry and consideration of such objections as may be preferred it appears to the Government that it is desirable that measures should be taken in the bed of any *Khud* or *Nallah* for the purpose of—

Action when Government considers it desirable to take measures to regulate the beds of Khuds and Nallahs. Vesting of such beds in the Government.

(a) regulating the flow of water within and preventing the widening or extension of such bed, or of

(b) reclaiming or protecting any land situate within the limits of such bed, they may either proceed at once in the manner provided in sub-section (2), or they may, in the first instance, issue a notification specifying the nature and extent of the measures which in their opinion are necessary, and the locality in, and the time within, which such measures are to be taken, requiring all owners and occupiers of land situate in such locality to carry out the measures specified in such notification.

(2) If the whole or any part of the bed of any *Khud* or *Nallah* be unclaimed, or, if in the opinion of the Government the measures deemed necessary under sub-section (1) are of such a character in regard to extent and cost that the interference of the Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any *Khud* or *Nallah* failing to comply with the requirements of any notification issued under sub-section (1), the Government may by notification declare that the whole or any part of the area comprised within



the limits of the bed of any *Khud* or *Nallah* shall vest in the Government for such period and subject to such conditions, if any, as may be specified in the notification, and may, from time to time, by like notification extend the period during which any such area shall remain vested in the Government :

Provided that no such declaration shall be made in respect of or shall affect any land included within the limits of the bed of any such *Khud* or *Nallah* which, at the date of the notification making such declaration, is cultivated and yields any produce of substantial value.

(3) When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures the decision of those paying the larger amount of land revenue shall be held to be binding on all.

9. Upon the making of any declaration under sub-section (2) of section 8 all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication therefor shall be suspended for the period specified in the declaration and for such further period, if any, to which the notification may be extended :

Effect of notification to suspend or extinguish private rights in the area notified under section 8.

Provided that, as far as circumstances admit, such rights of way and water shall be reserved in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons, if any, who, at the time of the making of such declaration, possessed any such rights over such area.

10. (1) The Collector shall, for the purpose of every notification issued under sub-section (2) of section 8, fix the limits of the area comprised within the bed of the *Khud* or *Nallah* to which such notification is to apply.

Power of the Collector to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the Government.

(2) Upon the publication of the notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Collector to—

(a) take possession of the area specified in such declaration ;

(b) eject all persons therefrom ; and

(c) deal with such area while it remains vested in the Government as if it were the absolute property of Government.



## BAR OF COMPENSATION FOR ACTS DONE UNDER SECTIONS 8, 9 AND 10.

**11.** No person shall be entitled to any compensation for anything at any time done in good faith in exercise of any power conferred by section 8, section 9 or section 10.

## POWER TO ENTER UPON AND DELIMIT NOTIFIED AREA AND BEDS.

**12.** It shall be lawful for the Collector and his subordinate officers, servants, caretakers and workmen from time to time, as occasion may require—

Power to enter upon, survey and demarcate local areas notified under section 3 or 8.

(a) to enter upon and survey any land comprised within any local area in regard to which any notification has been issued under section 3 or section 8;

(b) to erect bench-marks on and to delimit and demarcate the boundaries of any such local area; and

(c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to carry into effect all or any of the provisions of this Act:

Provided that reasonable compensation to be assessed and determined in the manner provided in this Act shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, shall be payable in respect of any thing done.

## INQUIRY INTO CLAIMS AND AWARD OF COMPENSATION.

**13.** (1) The Collector shall—

Inquiries into claims and award thereupon.

(a) fix a date for inquiry into all claims made under sections 7 and 8 and may, in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him;

(b) record in writing all statements;

(c) inquire into all claims duly preferred;

(d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or the persons making such claim, the extent, if any, to which, and the persons or person in whose favour, the right claimed is established, the extent to which it is



restricted or prohibited and the nature and amount of compensation if any awarded.

(2) For the purposes of every such enquiry the Collector may exercise all or any of the powers of a Civil Court in the trial of suits under the Code of Civil Procedure, 1977.

(3) The Collector shall announce his award to such persons interested or their representatives as are present and shall record the acceptance of those who accept it. To such as are not present the Collector shall cause immediate notice of his award to be given.

**14.** (1) In determining the amount of compensation and the taking over of possession the Collector shall be guided, so far as may be, by the provisions of sections 23, 24, 16 and 17 of the Jammu and Kashmir Land Acquisition Act, 1990 and as to matters which cannot be dealt with under those provisions by what is just and reasonable in the circumstances of each case.

(2) The Collector may with the sanction of the Government and the consent of the person entitled, instead of money, award compensation in land or by reduction in revenue or in any other form.

(3) In any case in which the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

#### PROCEDURE, RECORDS AND APPEALS.

**15.** (1) For every area, notified under section 3, or section 8, the Collector shall prepare a record setting forth the nature, description, and extent of all rights mentioned in section 4 and section 5—

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8 ;

(b) regulated, restricted or prohibited by any order under section 4 or section 5.

(2) When any award is made under section 14, its effect upon such rights shall also be recorded therein.

**16.** (1) Upon the publication of a notification issued under any of the provisions of this Act, the Collector shall cause a public notice or the substance thereof to be given at convenient places to which such notification relates.

Method of awarding compensation and effect of such award.

Record of right in respect of notified areas.

Mode of proclaiming notification and of serving notices orders and processes issued under the Act.



(2) The procedure prescribed in section 15-B, 15-C and 15-D of the Land Revenue Act, 1996, shall be followed, as far as may be, in proceedings under this Act.

**17.** Every order passed and every award made by the Collector under this Act, shall for the purposes of appeal, review and revision, respectively be deemed to be an order of the Collector within the meaning of section 11, 12, 13 and 14 of the Jammu and Kashmir Land Revenue Act, 1996:

Provided that nothing in this Act shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded, as to the apportionment of distribution thereof amongst such persons or any of them.

**18.** Any person who within the limits of any local area notified under section 3 commits any breach of any regulation made or restrictions or prohibitions imposed under section 4 or section 5 shall be punished with fine which may extend to one hundred rupees or in default with imprisonment for a period not exceeding one month.

**19.** No suit shall lie against the Government for anything done under this Act and no suit shall lie against any public servant for any thing done or purporting to have been done by him, in good faith, or against any private individual for any thing done or purporting to have been done by him in good faith under the orders of any such public servant, under this Act.

**20.** (1) The Government may make rules consistent with this Act—

(a) regulating the procedure to be observed in any inquiry or proceeding under this Act; and

(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Government Gazette and on the expiry of thirty days from the date of such publication shall have the force of law.



# THE LADAKH BUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

## CONTENTS.

Preamble.

SECTION.

SECTION.

1. Short title and extent.

3. Right of all sons to succeed in equal shares.

2. Definitions.

4. Saving.

# THE LADAKH DUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 14th Magh 2000/27th January 1944.]

## An Act to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh.

Whereas it is expedient to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh; It is hereby enacted as follows :—

Preamble.

1. (i) This Act may be called the Ladakh Budhists Succession to Property Act, 2000.

Short title and extent.

(ii) It shall extend to the whole of Jammu and Kashmir State, but shall apply to the Budhists who have their domicile in Ladakh.

2. In this Act, unless there is anything repugnant in the subject or context :—

Definitions.

(a) "Budhist" means a person who professes the Buddhist faith or religion ;

(b) "Ladakh" means the District of Ladakh.



3. On the death of a Buddhist his property where he leaves more than one son, shall, notwithstanding any law or custom to the contrary but subject to any valid disposition thereof which he may have made during his lifetime, be inherited by all his sons in equal shares :  
*Right of all sons to succeed in equal shares.*

Provided that sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall inherit *per stripes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him, and likewise the grandsons of a pre-deceased son shall take the share which their father would have taken.

4. The provisions of this Act shall not affect any right of succession accrued or any title to property acquired before the commencement of this Act.  
*Saving.*

## THE TRADE MARKS ACT, 2000.

### Act No. XIX of 2000.

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**THE TRADE MARKS ACT, 2000.**

**Act No. XIX of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

**An Act to provide for the Registration and more effective protection of Trade Marks.**

CHAPTER I.

PRELIMINARY.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks ; It is hereby enacted as follows :—

Preamble.

1. (1) This Act may be called the Trade Marks Act,

Short title, extent and commencement 2000.

(2) It extends to the whole of Jammu and Kashmir State.

(3) This section and section 85 shall come into force at once ; the remaining provisions of the Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.



**2.** (1) In this Act, unless there is anything repugnant in the subject or context,—

**Definitions.**

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act ;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person ;

(c) “District Court” has the meaning assigned to it in the Code of Civil Procedure, 1977 ;

(d) “High Court” means the High Court, as defined in section 48 of the Jammu and Kashmir Constitution Act, 1996 ;

(e) “limitations” (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within the State, or as to use in relation to goods to be exported to any market outside the State ;

(f) “mark” includes a device, brand, heading, label, ticket, name, signature, work, letter or numeral or any combination thereof ;

(g) “permitted use” means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject ;

(h) “prescribed” means prescribed by rules made, in relation to proceedings before the High Court, by the High Court, and in other cases, by the Government ;

(i) “registered” (with its grammatical variations) means registered under this Act ;

(j) “registered trade mark” means a trade mark which is actually on the register ;

(k) “registered user” means a person who is for the time being registered as such under section 41 ;

(l) “trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to



indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person ;

(m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfers, not being assignment ;

(n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation, whatsoever, to such goods.

3. The provisions of this Act shall be in addition to <sup>Application of other</sup> and not in derogation of, the provisions of <sup>laws not barred.</sup> any other law for the time being in force.

## CHAPTER II.

### THE REGISTRAR AND CONDITIONS FOR REGISTRATION.

4. For the purposes of this Act there shall be established <sup>The Register of trade</sup> at the Patent Office a Trade Mark Registry, <sup>marks.</sup> and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks (and is in this Act referred to as the Registrar).

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.



**5.** (1) A trade mark may be registered only in respect of particular goods or classes of goods.  
Registration to be in respect of particular goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

**6.** (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—  
Distinctiveness requisite for registration.

(a) the name of a company, individual, or firm, represented in a special or particular manner;

(b) the signature of the applicant for registration or some predecessor in his business;

(c) one or more invented words;

(d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India;

(e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from, goods in the case of which no such connection subsists, either generally or where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

(a) the trade mark is inherently so adapted to distinguish, and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish:

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date



prior to the 1st Baisakh 1996, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

**7.** (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

**8.** No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a court of justice ;

(b) be likely to hurt the religious susceptibilities of any class of His Highness' subjects ; or

(c) be contrary to any law for the time being in force or to morality.

**9.** No word which is commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require :

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

**10.** (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so



nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

**11.** (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods in relation to which they are respectively used or proposed to be used ; or

(b) statements of number, price, quality or names of places ; or

(c) other matters of a non-distinctive character which does not substantially affect the identity of the trade mark ; or

(d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

**12.** (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

Associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be and shall be registered as, associated trade marks.



(3) All trade marks registered in accordance with the provisions of sub-section (3) of section II as a series in one registration shall be deemed to be and shall be registered as associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration subject to disclaimer.

**13.** If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or of the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require as condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration :

Provided that no disclaimer shall affect any right of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III.

#### PROCEDURE FOR, AND DURATION OF, REGISTRATION.

**14.** (I) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

Application for registration.



(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

**15.** (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised, in the prescribed manner:

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall serve in the prescribed manner a copy thereof on the person giving notice of opposition and shall, after hearing the parties, if so required, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in the State, the tribunal may require him to give security for costs of the proceedings before it, and in



default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

**16.** 1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any direction made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

**17.** (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade, those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

**18.** (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.



(2) The Registrar, shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

**19.** Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

## CHAPTER IV.

### EFFECT OF REGISTRATION.

**20.** (I) No person shall be entitled to institute any proceeding to prevent, or to recover damages for the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 1st Baisakh 1996, by such person or by a predecessor in title of his and unless an application for its registration made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

No action for infringement of unregistered trade marks.



(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

**21.** Subject to the provisions of sections 22, 25 and 26  
Right conferred by registration. as proprietor of a trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark ; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

**22.** (1) The right to the use of a trade mark given under  
No infringement in certain circumstances. section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in any other circumstances, to which having regard to any such limitations, the registration does not extend

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark ; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the



use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

**23.** In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

**24.** In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

**25.** Nothing in this Act shall entitle the proprietor of a registered user of a registered trade mark to interfere with or restrain the use by person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his, whichever is the earlier or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

**26.** No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name, address or description of goods, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be



likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

**27.** (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance :

Words used as name or description of an article or substance.

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person carrying on a trade therein, not being used in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor ; or

(b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cessor of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance :—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then

(a) for the purposes of any proceedings under section 46—

(i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register ;

(ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in the relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark



except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ;

(b) for the purpose of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of such words all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (i) first became well known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V.

### ASSIGNMENT AND TRANSMISSION.

**28.** The person for the time being entered in the register as proprietor of a trade mark, shall subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

**29.** Notwithstanding anything in any other law to the contrary, a registered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

**30.** An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not :

Provided that except in connection with the goodwill of a business assignment or transmission shall be permissible only, if—

(a) at the time of assignment or transmission of the



unregistered trade mark it is used in the same business as a registered trade mark, and

(b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and

(c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

**31.** (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion :

Restrictions on assignment or transmission where multiple exclusive rights would be created.

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise trade in, within the State (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside the State.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or mis-representation be conclusive as to the validity or invalidity under sub section (1) of the assignment in so far as such, validity or invalidity depends, upon the facts set out in the case, but as regards, a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.



**32.** Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in the State and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in the State:

Restrictions on assignments or transmissions where exclusive rights would be created in different parts of the State.

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claim that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

**33.** Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months, from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Conditions for assignment otherwise than in connection with the goodwill of a business.



**34.** (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

**35.** (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

Registration of assignments and transmission.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

## CHAPTER VI.

### USE OF TRADE MARKS AND REGISTERED USERS.

**36.** (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Jammu and Kashmir Companies Act, 1997, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed use of trade mark by company to be formed.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name



of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

**37.** (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, on the ground either—

Removal from register and imposition of limitations on ground of non-use.

(a) that the trade mark was registered without any *bona-fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona-fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application ; or

(b) that upto a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded



in, in particular place in the State (otherwise than for export from the State) or in relation to goods to be exported to a particular market outside the State, and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in ; or in relation to goods to be so exported, the tribunal is of opinion that he might properly be permitted so to register such a trade mark, on application by that person in the prescribed manner to the High Court or to the Registrar, that tribunal may impose on the registration of the first mentioned trade mark such limitations as it thinks proper for securing that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

**38.** (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first mentioned goods then, notwithstanding that the proprietor registered in respect of the first mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37 the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.



(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar the registration of a trade mark as a defensive trademark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

**39.** (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark and either with or without conditions or restrictions).

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor for any purpose for which such use is material under this Act or any other law.

**40.** (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making a proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any



costs unless he enters an appearance and takes part in the proceedings.

**41.** (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor, or by some person authorised to the satisfaction of the Registrar to act on his behalf—

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restrictions as to persons for whose registration as registered users application may be made ;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods to the mode or place of permitted use, or to any other matter ;

(d) stating whether the permitted use is to be for a period or without limit of period and if for a period the direction thereof and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rival in trade.

(5) The Registrar shall issue notice in the prescribed manner—



(a) of the registration of a person as a registered user, to any other registered user, of the trade mark ;

(b) of an application under section 42, to the registered proprietor, and each registered user, (not being the applicant) of the trade mark.

**42.** Without prejudice to the provisions of section 46, the registration of a person as a registered user—

Power to Registrar to vary or cancel registration as registered user.

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely :—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use or in such a way as to cause or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

**43.** Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Registered user not to have right of assignment or transmission.

**44.** (I) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, Use of one of associated or substantially identical trade marks equivalent to use of another.



or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall, for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

**45.** The application in the State of a trade mark to goods to be exported from the State and any other act done in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within the State would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purposes for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII.

### RECTIFICATION AND CORRECTION OF THE REGISTER.

**46.** (1) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar and the tribunal may make such order for making, expunging or varying the entry as it may think fit.



(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) The High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

**47.** (1) The Registrar may on application made in the prescribed manner by the registered proprietor,—

Correction of register.

(a) correct any error in the name, address or description of the registered proprietor of a trade mark ;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;

(c) cancel the entry of a trade mark on the register ;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ;

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change in the name, address or description of the registered user.

**48.** (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

Alteration of registered trade mark.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties, if so required, decide the matter.

(3) Where leave is granted under this section, the trade



mark as altered shall be advertised in the prescribed manner unless the application has already been advertised under sub-section (2).

**49.** (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes

Adaptation of entries in register to amended or substituted classification of goods.

of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods :

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition of antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII.

### CERTIFICATION TRADE MARKS.

**50.** Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

Provisions of this Act applicable to certification trade marks.

**51.** A mark shall not be registerable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

Certification trade mark not to be registered in name of person trading in goods certified thereby.

**52.** In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

Determination whether a mark is a certification trade mark.

(a) the mark is inherently so adapted to distinguish in



relation to the goods in question ; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

**53.** (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

**54.** When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Government who shall consider the application with regard to the following matters, namely :—

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;

(b) whether the draft of the regulations to be deposited under section 56 is satisfactory ;

(c) whether in all the circumstances the registration applied for would be to the public advantage ; and may either—

(i) direct that the application shall not be accepted ; or

(ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters ; but, except in the case of a direction



for acceptance and approval without modification and unconditionally, the Government shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Government may, at the request of the applicant, made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so, however, that the Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

**55.** (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14 :

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54, the Government shall, after hearing the parties, if so required, and considering any evidence, decide whether and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters to be permitted.

**56** (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulation) ; and regulations so

Deposit of regulations governing the use of a certification trade mark.



deposited shall be open to inspection in like manner as the register.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Government.

(3) The Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Government shall not decide the matter without giving the parties an opportunity of being heard.

**57.** Subject to the provisions of sections 25, 26 and 58,

Right conferred on the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either ;

(a) as being use as a certification trade mark, or

(b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

**58.** (1) The right to the use of a certification trade mark

No infringement in given under section 57 by registration certain circumstances. shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation



under the relevant regulations has applied the mark and has not consequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

(b) in relation to goods adapted to form part of, or to be accessory to other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

**59.** (1) The Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely :—

(a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered to certify those goods ;

(b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part ;

(c) that it is no longer to the public advantage that the mark should be registered ;

(d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied ; and neither the High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for



giving effect to any order made under sub-section (1).

**60.** The Registrar shall have no power to award costs to  
Cost not to be awarded or against any party on an appeal to him in certain cases.  
 against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

**61.** Save as otherwise expressly provided in this Chapter,  
Decision of the Government to be final. every decision of the Government under this Chapter shall be final.

## CHAPTER IX.

### SPECIAL PROVISIONS FOR TEXTILE GOODS.

**62.** The Government shall prescribe classes of goods (in  
Textile goods. this Chapter referred to as textile goods)  
 to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

**63.** (1) There shall be kept for the purposes of this Act a  
Textile Marks Record. record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.

(2) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the registered office, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Restriction on registration of textile goods. **64.** In respect of textile goods being piece-goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be adapted to distinguish;

(c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be



subject to such conditions and restrictions as may be prescribed.

**65.** (1). Applications for the registration of a trade mark in respect of textile goods shall be made to the Registrar.

**66.** (1) The Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

(2) The Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

## CHAPTER X.

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

**67.** If any person makes, or cause to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

**68.** (1) From such date, not being earlier than one year from the commencement of this Act, as the Government may, by notification in the Government Gazette appoint in this behalf no person shall make any representation—

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark ; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances



in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in State in relation to a trade mark of the word 'registered' or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside State being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside the State in relation solely to goods to be exported to that country.

**69.** If a person without due authority, uses in connection with any trade, business, calling or profession—  
Restraint of use of  
 Royal Arms and State  
 emblems.

(a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or

(b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Highness' Government, he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title of the Registrar, be restrained by injunction from continuing so to use the same.

## CHAPTER XI.

### MISCELLANEOUS

Procedure before the Registrar. **70.** In all proceedings under this Act before the Registrar—



(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witness, compelling the discovery and production of documents and issuing commissions for the examination of witness ;

(b) evidence shall be given by affidavit provided that the Registrar may, if he thinks fit take oral evidence in lieu of, or in addition to, such evidence by affidavit ;

(c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard ;

(d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable and any such order shall be executable as a decree of a Civil Court.

**71.** In all proceedings under this Act before the Government, evidence shall be given by affidavit, provided that the Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

**72.** Where under this Act an applicant has the option of making an application either to the High Court or to Registrar :—

Procedure in certain cases of option to apply to the High Court or Registrar.

(a) if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the application shall be made to the High Court ;

(b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the High Court.

**73.** No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Suits for infringement to be instituted before District Court.

**74.** (1) In any suit or other legal proceedings in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

Appearance of Registrar in proceedings involving rectification of register.



(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit of other proceedings.

(3) The costs of the Registrar shall be in the discretion of the tribunal but the Registrar shall not be ordered to pay the costs of any of the parties.

**75.** (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in the State and in all proceedings without further proof of production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

**76.** (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Government, from any decision of the Registrar under this Act or the rule made thereunder to the High Court :

Provided that if any suit or other proceeding concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall be made to the High Court.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be ; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provisions of this Act and of rules made thereunder the provisions of the Code of Civil Procedure shall apply to appeals before the High Court under this Act.



**77.** The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.  
Power to the High Court to make rules.

**78.** If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a question, given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.  
Certificate of validity.

**79.** In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.  
Trade usage, etc. to be taken into consideration

**80.** Where by or under this Act, any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Government, be done, in lieu of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as trade marks agent.  
Agents.

**81.** There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Government.  
Fees.

**82.** The provisions of this Act shall be binding on the Government.  
Government to be bound.

**83.** If at any time after the expiry of six months from the commencement of this section, it is made to appear to the Government that any Government outside the State has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in the State, the Government may, by notification in the Government Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in the State under this Act.  
Power to make reciprocal arrangements with other Governments.



on his making an application for registration in the State within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

**84.** (1) The Government may, subject to the condition of previous publication by notification in the Government Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may —

(a) prescribe the classification of goods for the purpose of the registration of trade mark; and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;

(b) require the making of duplicates of trade marks and other documents connected therewith;

(c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;

(d) prescribe additional matters to be entered in the register;

(e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected;

(f) prescribe the form of certificates of registration;

(g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;

(h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;

(i) prescribe classes of goods as textile goods for the purposes of Chapter IX;

(j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees;

(k) regulate the awarding of costs by the Registrar under section 70;

(l) prescribe the conditions subject to which an agent referred to in section 80 may act;

(m) prescribe the fees to be paid under this Act;

(n) provide for the establishment of branches of the Trade Marks Registry when expedient for facilitating the



working of this Act, and authorises the preparation of copies of the register to be kept at such branch offices ;

(o) prescribe the manner in which, in proceedings under this Act, before the Government or the Registrar, applications shall be made, notices given and matters advertised ;

(p) prescribe times or periods required by this Act to be prescribed ;

(q) provide, generally for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 6, and for regulating all things by this Act placed under the direction or control of the Government or the Registrar.

**85.** The Government may, by notification in the Government Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act :

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing in the trade mark.

## THE JAMMU AND KASHMIR DRUGS ACT, 2000.

### Act No. XX of 2000.

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**THE JAMMU AND KASHMR DRUGS ACT, 2000.****Act No. XX of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 21st Magh 2000 3rd/February 1944.]*

**An Act to regulate the import, manufacture, distribution and sale of drugs.**

WHEREAS it is expedient to regulate the import into, and the manufacture, distribution and sale in the State of drugs; it is hereby enacted as follows :—

Preamble.



## CHAPTER I.

## INTRODUCTORY.

1. (1) This Act may be called the Jammu and Kashmir  
Short title, extent and commencement. Drugs Act, 2000.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. The provisions of this Act shall be in addition to, and  
Application of other laws not barred. not in derogation of, the Dangerous Drug Rules, made under the Jammu and Kashmir Excise Act, 1958, and any other law for the time being in force.

3. In this Act, unless there is anything repugnant in the subject or context.—  
Definitions.

(a) "the Board" means the Drugs Advisory Board constituted under section 5 ;

(b) "drug" includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine ;

(c) "to import" with its grammatical variations and cognate expressions, means to bring into the State ;

(d) "patent or proprietary medicine" means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other Pharmacopeia authorised in this behalf by the Government after consultation with the Board ;

(e) "prescribed" means prescribed by rules made under Chapter II or Chapter IV by the Government.

4. Any substance specified as poisonous by rules made  
Presumption as to poisonous substances. under Chapter IV shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV, as the case may be.



## CHAPTER II.

## THE DRUGS ADVISORY BOARD AND THE DRUG LABORATORY.

5. (1) The Government shall, as soon as may be possible constitute a Board (to be called the Drugs Advisory Board) to advise the Government on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

(2) The Board shall consist of the following members, namely :—

- (i) the Director of Medical Services *ex-officio*, who shall be Chairman ;
- (ii) the Director or Pharmacologist of the Drug Research Laboratory ;
- (iii) one of the Deputy Directors Medical Services, to be nominated by the Director of Medical Services ;
- (iv) the Chemical Examiner ;
- (v) the Superintendent of Jammu or Srinagar Hospital ;
- (vi) two private medical practitioners, one to be elected by the Medical Association Jammu and one by the Medical Association Kashmir.
- (vii) two persons of the pharmaceutical profession to be nominated by the Government, one from the Jammu Province and one from the Kashmir Province.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination or re-election.

(4) The Board may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staffs as the Government consider necessary.



**6.** (1) The Government shall direct the Drug Research Laboratory to carry out the functions entrusted to it by this Act or any rules made under this Chapter.

(2) The Government may after consultation with the Board, make rules prescribing—

- (a) the functions of the Drug Research Laboratory ;
- (b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula of list of ingredients contained therein in a manner readily in forms of such certificates and the fees payable therefor ;
- (c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act ;
- (d) the procedure for the submission to said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ; and
- (e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

### CHAPTER III.

#### IMPORT OF DRUGS.

**7.** (1) For the purposes of this Chapter and Chapter IV, the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Government, after consultation with the Board and after giving, by notification in the Government Gazette not less than three months' notice of their intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter and Chapter IV, thereupon the Schedule shall be deemed to be amended accordingly.

**8.** For the purposes of this Chapter and Chapter IV, a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for or resembles



in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

- (b) if it purports to be the product of a place or country of which it is not truly a product ; or
- (c) if it is imported under a name which belongs to another drug ; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or
- (e) if it is made to appear of better or greater therapeutic value than it really is ; or
- (f) if it is not labelled in the prescribed manner ; or
- (g) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or
- (h) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

9. From such date as may be fixed by the Government by notification in the Government Gazette in this behalf, no person shall import :—

Prohibition of import of certain drugs.

- (a) any drug which is not of standard quality ;
- (b) any misbranded drug ;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with such licence ;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;
- (e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed :



Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Government may after consultation with the Board, by notification in the Government Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**10.** The law for the time being in force relating to Customs and to goods, the import of which is prohibited by an order made by the Government under section 25 of the Jammu and Kashmir Customs Act, 1958 shall, subject to the provisions of section 11 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and Officers empowered under that Act to perform the duties imposed thereby on the Inspector General of Customs and Excise and other officers of Customs shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of section 1, the Inspector General of Customs and Excise, or any officer authorised by the Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Drug Research Laboratory and if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

**11.** (1) Whoever contravenes any of the provisions of this Chapter shall, in addition to any penalty to which he may be liable under the provisions of section 10, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees or with both.

(2) Whoever, having been convicted under sub-section (1),



is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

**12.** Where any offence punishable under section II has been committed the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

Confiscation.

**13.** No Court inferior to that of a Magistrate of the first class shall try an offence punishable under section II.

Jurisdiction.

## CHAPTER IV.

### MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

**14.** From such date as may be fixed by the Government by notification in the Government Gazette in this behalf, no person shall himself or by any other person on his behalf :—

Prohibition of manufacture and sale of certain drugs.

(a) manufacture for sale, or sell or stock or exhibit for sale or distribute—

- (i) any drug which is not of standard quality ;
- (ii) any misbranded drug ;
- (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of certificate of registration granted, in the manner prescribed by the Government in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;

(iv) any drug which by means of any statement, design or device accompanying it or by any other means purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed ;

(v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder ;

(b) sell, or stock or exhibit for sale, or distribute any drug which has been imported or manufactured in



contravention of any of the provisions of this Act or any rule made thereunder ;

(c) manufacture for sale, or sell or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the condition of a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions of small quantities of any drug for the purposes of examination, test or analysis :

Provided further that the Government may, after consultation with the Board, by notification in the Government Gazette, permit subject to any conditions specified in the notification the manufacture for sale or distribution of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if without disclosing a full and detailed recipe of the ingredients it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**15.** (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import or that a purchaser having bought only for the purpose of test or analysis has not been prejudiced by the sale.

(2) For the purposes of section 14 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that :—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects ; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it ; provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(3) A person not being the manufacturer of a drug or



his agent for the distribution thereof, shall not be liable for a contravention of section 14 if he proves:—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provision of that section and that the drug while in his possession remained in the same state as when he acquired it ; or

(b) that he acquired the drug from a person resident in the State under a written warranty in the prescribed form and signed by such person that the drug does not in any way contravene the provisions of section 14, and that the drug while in his possession remained in the same state as when he acquired it :

Provided that a defence under clause (b) shall be open to a person only—

(i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving the name and address of the warrantor and

(ii) if he proves that he has within the same period, sent written notice of such intention to the said warrantor.

**16.** The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification.

**17.** (1) The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as the Government may assign to them respectively :

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Ranbir Penal Code and shall be officially subordinate to such authority as the Government may specify in his behalf.

**18.** Subject to the provisions of section 19 and of any rules made by the Government in this behalf, an Inspector may within the local limits for which he is appointed—

(a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other



drug prescribed in this behalf the plant and process of manufacture and the means employed for standardizing and testing the drugs ;

(b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed ;

(c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 14, order in writing the persons, in whose possession such drug may be not to dispose of any stock of such drug for specified period not exceeding 10 days or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug ; Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate, or the Additional District Magistrate or the Sub-Divisional Magistrate and has been authorised by him to take such action ;

(d) for any of the aforesaid purposes enter at all reasonable times with such assistants, -if any, as he considers necessary, any premises wherein any drug is being manufactured or being sold or is stocked or exhibited for sale, or is kept for distribution ;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

**19.** (1) Where an Inspector takes any sample of a drug under this Chapter, he shall tender its fair price and may require a written acknowledgement therefor.

*Procedure of Inspectors.*

(2) Where the price tendered under sub-section (1) is refused ; or where the Inspector seizes the stock of any drug under clause (c) of section 18, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked ;

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only ;



Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce in the Court before which proceedings, if any, are instituted in respect of the drug; and

(iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 15.

(5) Where an Inspector takes any action under clause (c) of section 18:—

(a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 14 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

**20.** Every person for the time being in charge of any

premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to

disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

**21.** (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 19, shall deliver to the Inspector submitting it a signed

Persons bound to disclose place where drugs are manufactured or kept.

Reports of Government Analysts.



report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section 3 of section 15 and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom, the sample was taken or the said warrantor, has within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Drug Research Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of a Government Analyst's report the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 19 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of Drug Research Laboratory the result thereof and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Drug Research Laboratory under sub-section (4) shall be paid by the complainant or the accused as the Court shall direct.

**22.** A person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

**23.** Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for manufacture, sale etc. of drugs in contravention of this Chapter.

Purchase of drug for test or analysis.



**24.** Whoever, in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 14 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalties for giving false warranty or misuse of warranty.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

**25.** Whoever uses any report of a test or analysis made by the Drug Research Laboratory or by a Government Analyst, or any extract from such report for the purpose of advertising any drug shall be punishable with fine which may extend to five hundred rupees.

Penalty for use of Government Analyst's report for advertising.

**26.** Whoever, having been convicted of any offence under section 23 or section 24 or section 25, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees or with both.

Penalty for subsequent offences.

**27.** Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rules made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

Confiscation

**28.** (1) No prosecution under this Chapter shall be instituted except by an Inspector.

Cognizance of offences.

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Chapter.

**29.** The Government may, after consultation with the Board and after previous publication by notification in the Government Gazette,

Power to make rule



make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may —

(a) provide for the establishment of laboratories for testing and analysing drugs ;

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors ;

(c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(d) prescribe in respect of biological and organometallic compounds, the units or method of standardization ;

(e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs, or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;

(f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have ;

(g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis ;

(h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency ;

(i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions ;

(j) regulate the mode of labelling packed drugs and prescribe the matters which shall or shall not be included in such labels ;

(k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale or distribution of any drug in which that proportion is exceeded, and specified substances which shall be deemed to be poisonous for the purposes of this Act and the rules made thereunder ;



(l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug;

(m) prescribe the form of warranty referred to in subsection (3) (b) of section 15;

(n) regulate the powers and duties of Inspectors;

(o) prescribe the form of report to be given by Government Analysts, and the manner of application for test or analysis under section 22 and the fees payable therefor;

(p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 27;

(q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Act or the rules made thereunder of any specified drug or class of drugs.

**30.** No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection to persons acting under this Act.

## THE SCHEDULE.

(See section 7)

*Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale or distributed.*

Class of drugs.	Standard to be complied with.
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1. Patent of proprietary medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed or to the Drug Research Laboratory, as the case may be.
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2. Substances commonly known as vaccines sera, toxins, exoids, anti-toxins and antigens and biological products of such nature.	The standards maintained at the National Institute and Medical Research, London and such further standards of strength, quality and purity as may be prescribed.
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- |   |  |
|---|--|
| 4. Vitamins, hormones and analogous products. | The standards maintained at the National Institute for Medical Research, London and such further standards of strength, quality and purity as may be prescribed.   |
| 4. Other drugs                                | ... The standard of identity, purity and strength specified in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other prescribed pharmacopeia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations. |
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## THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

**Act No. XXI of 2000.**

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*Preamble.*

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**SECTION.**

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| 5. Duty of Medical Practitioner.  | 11. Power to make rules.   |
| 6. Duty of person suffering from a venereal disease to offer for examination and undergo treatment. | 12. Prosecution for offences under sections 3 and 6 of this Act. |
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# THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

Act No. XXI of 2000.

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Magher 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]

## An Act to provide for the Registration of persons suffering from venereal diseases and their treatment.

WHEREAS it is expedient to provide for the registration of persons suffering from venereal diseases and their treatment; It is hereby enacted as follows:—

Preamble.

1. (i) This Act may be called the Jammu and Kashmir Venereal Diseases Act, 2000.

Short title, extent and commencement.

(ii) It extends to the District of Udhampur and the Tehsils of Basohli and Reasi of Kathua and Reasi Districts respectively.

The Government may, by notification in the Government Gazette, extend it to the whole or any specified part of the State.

(iii) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. Unless there is anything repugnant in the subject or context:—

Definitions.

(i) "venereal disease" includes syphilis, gonorrhoea, chandroid, granuloma venereum;

(ii) "Government dispensary" includes a Government hospital or a centre opened by the Government for the purpose of diagnosis and treatment of persons suffering from venereal diseases;

(iii) "Medical Officer" means the Medical Officer-in-charge of a Government dispensary;

(iv) "prescribed" means prescribed by rules made under this Act.

3. Every person knowing that he is suffering from a venereal disease shall have his name and other prescribed particulars registered in the manner indicated in section 4 of the Act.

Duty of person suffering from a venereal disease to have his name etc. registered.



**4.** Every Medical Officer shall maintain a register in Maintenance of a the prescribed form and shall enter or register. cause to be entered therein the names and other prescribed particulars of persons suffering from a venereal disease and ordinarily residing within his jurisdiction.

**5.** Every medical practitioner including a Hakim or a Duty of Medical Prac- Vaid who in the course of his professional tioner. duty or otherwise comes to know that any person is suffering from a venereal disease, shall forthwith report the name and such other particulars of such person as are within his knowledge to the Medical Officer within whose jurisdiction such person ordinarily resides.

**6.** Every person suffering from a venereal disease shall offer himself for examination for the purposes of diagnosis and treatment of such disease before any qualified Hakim, Vaid or other medical practitioner and shall undergo such treatment as such Hakim, Vaid or medical practitioner may prescribe for him.

**7.** The Government shall provide free of charge facilities necessary for examination, diagnosis and treatment of venereal diseases in the existing dispensaries and such other dispensaries as the Government may open in different localities, for male as well as for female patients.

**8.** Any medical officer or qualified private or subsidized medical practitioner shall be entitled to obtain free of cost a scientific report from any Government clinic or laboratory on any material which such medical practitioner may submit from a patient suspected to be suffering from a venereal disease.

**9.** All information obtained regarding diagnosis and treatment of any person suffering from a venereal disease shall be regarded as Secrecy of information. strictly confidential.

**10.** (1) Whoever contravenes any of the provisions of sections 3, 5, 6, and 9 of this Act shall be punishable with fine which may extend to twenty-five rupees.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall be punishable with a fine which may extend to one hundred rupees.

**11.** (1) The Government may make rules for carrying out the provisions of this Act. Power to make rules.



(2) In particular and without prejudice to the generality of the foregoing power such rules may:—

(a) prescribe the form of the register to be maintained under section 4 ;

(b) specify the particulars to be given by a person registering his name under section 3 ;

(c) provide for the distribution of anti-venereal drugs amongst the private medical practitioners and the minimum qualifications of such medical practitioners ; and

(d) provide for the examination, diagnosis and treatment of females suffering from a venereal disease.

**12** No Court shall take cognizance of an offence under sections 3 and 6 of this Act, except on the complaint of a Medical officer.

■ Prosecution for offences under sections 3 and 6 of this Act.











# LAWS OF JAMMU AND KASHMIR.

(Being a collection of all the enactments, whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State.)

## SUPPLEMENT

( KATIK - CHET, 2002 PART II and 2003 )



*Published under authority of His Highness' Government,  
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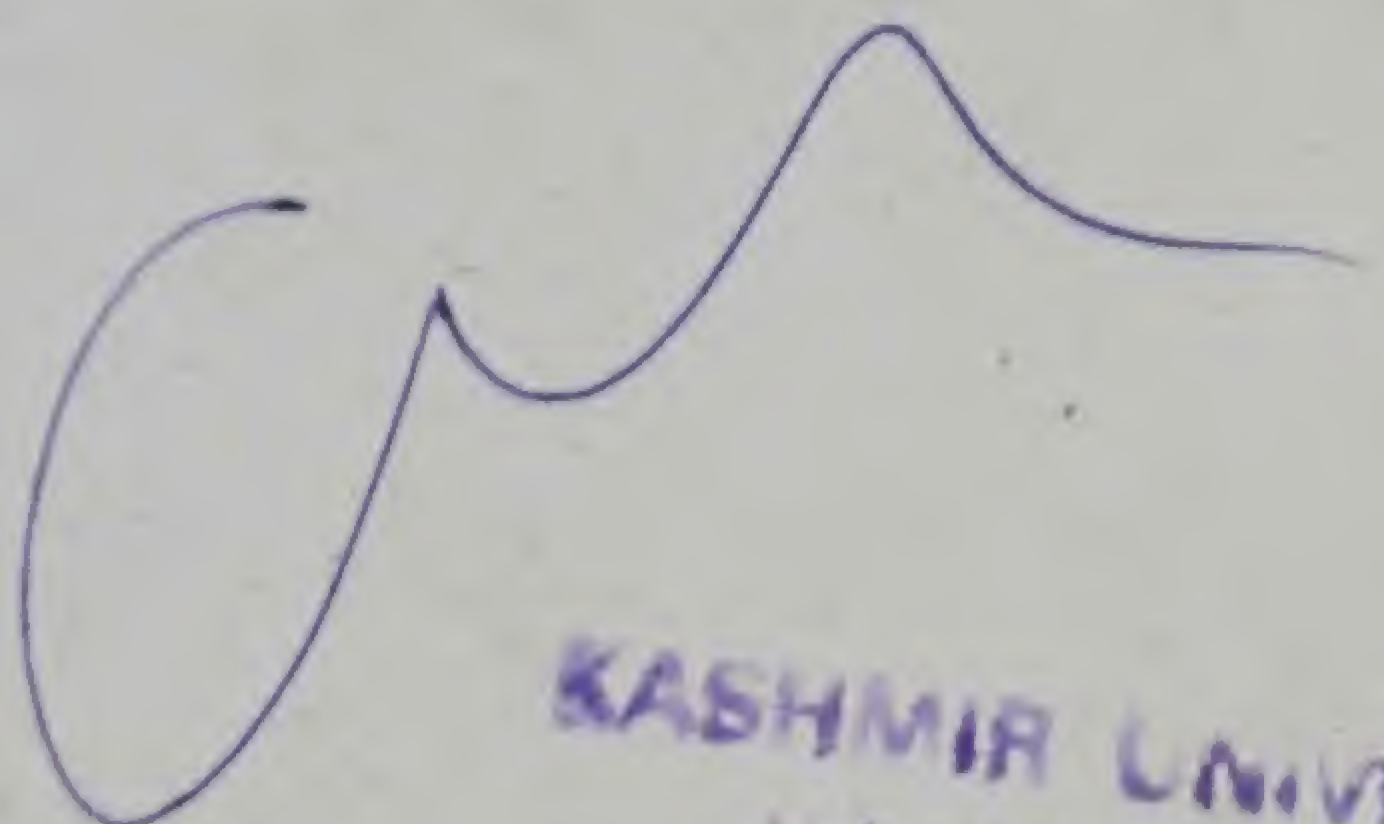
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# **THE SPECIAL PROCEDURE (AMENDMENT) NOTIFICATION 2003.**

**No. 3-L/2003**

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**SECTION.**

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|--|--------------------------------------|

# **THE SPECIAL PROCEDURE (AMENDMENT) NOTIFICATION, 2003.**

**No. 3-L/2003, dated 9th August, 1946.**

WHEREAS to remove certain doubts it is expedient further to amend Notification No. 13-L of 23rd June, 1931;

Now, therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, His Highness is pleased to direct that the following further amendments shall be made in the said Notification, namely:—

I. In section 1 of the said Notification:—

Amendment of section 1 of notification 13-L of 23rd June, 1931.

- (i) for the words, figures and letters “under section 124-A of the Indian Penal Code, 120-B of the Ranbir Dand Bidhi” the words, figures and letters “under sections 124-A and 153-A of the Ranbir Penal Code” shall be substituted;
- (ii) the full point at the end shall be omitted and the following words shall be added, namely:—  
“in accordance with the procedure laid down in Chapter XXI of the Code of Criminal Procedure, for the trial of warrant cases”.



2. J. & K. LAWS, SUPPLEMENT, 2002 (PART II) AND 2003.

2. It is further directed that these amendments shall be deemed to have effect from the date of commencement of the Act X of 1995 was sanctioned.

## THE JAMMU AND KASHMIR EXTRADITION ACT, 2003.

Act No. II of 2003

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*Preamble.*

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**THE JAMMU AND KASHMIR EXTRADITION ACT.**

**Act No. II of 2003.**

*[Received the assent of His Highness the Maharaja Bahadur on 15th of July 1946 and published in the Government Gazette dated 22nd Katik, 2003/ 7th November, 1946.]*

**An Act to consolidate and amend the law relating to the extradition and rendition of criminals.**

WHEREAS it is expedient to consolidate and amend the law relating to the extradition of criminals ;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Jammu and Kashmir Extradition Act, 2003.

Short title, extent and commencement.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(a) " District Magistrate " includes any Magistrate who is by a general or special order authorised by the Government to exercise the powers or perform the duties of a District Magistrate under the Act ;

(b) " Extradition Offence " means any such offence as is described in the schedule hereto annexed ;

(c) " Foreign State " means a State outside India ;



(d) "Offence" includes any act, wheresoever committed, which would, if committed in the Jammu and Kashmir State, constitutes an offence;

(e) "Requisitioning Authority" means an authority considered by the Government to be competent to make a requisition for the surrender of persons under the provisions of the Act.

## CHAPTER II.

### SURRENDER OF PERSONS ACCUSED OF HAVING COMMITTED EXTRADITION OFFENCES IN FOREIGN STATE.

3. (1) Where a requisition is made to the Government by a requisitioning authority for the surrender of a criminal who has committed or is supposed to have committed an extradition offence in a foreign State and who is in or who is suspected of being in the State, the Government may, if they think fit, issue an order to the District Magistrate of the district in which such person is believed to be, directing him to inquire into the case.

Requisition for surrender.

(2) The District Magistrate shall issue a summons or warrant for the arrest of the criminal according as the case appears to be one in which a summons or warrant would ordinarily issue.

Summons or warrant for arrest.

(3) When such criminal appears or is brought before the District Magistrate, the District Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Sessions or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

Inquiry by District Magistrate.

(4) If the District Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the criminal to prison to await the orders of the Government.

Committal.

(5) If the District Magistrate is of the opinion that a *prima facie* case is not made out in support of the requisition or if the case is one which is bailable under the provisions of the Code of Criminal

Bail.



Procedure for the time being in force, the District Magistrate may release the criminal on bail.

(6) The District Magistrate shall report the result of his inquiry to the Government and shall forward together with such report any written statement which the criminal may desire to submit for the consideration of the Government.

(7) If the Government are of opinion that such report or written statement raises an important question of law they may make an order referring such question of law to the High Court of Judicature and the criminal shall not be surrendered until such question has been decided.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Government are of opinion that the criminal ought to be surrendered, they may issue a warrant for the custody and removal of such criminal and for his delivery at a place and to a person to be named in the warrant.

(9) It shall be lawful for any person to whom a warrant is directed, in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be retaken, as a person accused of an offence against the law of the State may be retaken upon an escape.

(10) If such warrant as is prescribed by sub-section (8) is not issued and executed in the case of any criminal who has been committed to prison under sub-section (4) within two months after such committal the High Court may, upon application made to it on behalf of such criminal and upon proof that reasonable notice of the intention to make such application has been given to the Government, order such criminal, to be discharged unless sufficient cause is shown to the contrary.

4. (1) Where it appears to any District Magistrate that a person within the local limits of his jurisdiction is a criminal of a foreign State, he may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in



his opinion, justify the issue of a warrant if the crime of which he is accused or has been convicted had been committed within the local limits of his jurisdiction.

(2) The District Magistrate shall forthwith report the issue of warrant under this section to the Government.

(3) A person arrested upon a warrant issued under this section shall not be detained more than two months unless within that period the District Magistrate receives an order made with reference to such person under section 3, sub-section (1).

(4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in the State the crime of which he is accused or has been convicted.

5. (1) If the Government are of opinion, that the crime of which any criminal of a foreign State is accused or alleged to have been convicted is of a political character, they may if they think fit, refuse to issue any order under section 3, sub-section (1).

(2) The Government may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged.

### CHAPTER III.

#### SURRENDER OF PERSONS HAVING COMMITTED OFFENCES IN BRITISH INDIA OR AN INDIAN STATE.

6. (1) When an extradition offence has been committed or is supposed to have been committed by a person in British India or an Indian State in extradition alliance with the Jammu and Kashmir State and such person escapes into or is in the Jammu and Kashmir State, and the requisitioning authority makes a requisition to the Government for his surrender and delivery at a place, and to a person or authority, indicated in the requisition the Government shall transmit the requisition to the District Magistrate of the district in which such person is believed to be.



(2) Every such requisition shall be accompanied by a summary of the *prima facie* evidence and attested copies of the depositions of prosecution witnesses and if the person has already been convicted a certified copy of the judgment convicting him.

(3) The District Magistrate shall examine the papers accompanying the requisition and may take such evidence, if any, as may be produced in support of the requisition; he may also, in his discretion, examine such person and then determine whether a *prima facie* case is made out in support of the requisition.

(4) If the District Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he shall, by a warrant, authorise the police to hand over the person requisitioned (unless released in accordance with the provisions of the Act) to a person or authority indicated in the requisition and at the place specified therein.

(5) If the District Magistrate is of the opinion that a *prima facie* case is not made out in support of the requisition, he shall report the result of his inquiry to the Government. If, on receipt of such report, the Government decide that such person should be surrendered, they may direct the District Magistrate to comply with the requisition. If the Government agree with the report of the District Magistrate they shall inform the requisitioning authority accordingly.

(6) In respect of the enforcement of the attendance of the persons requisitioned and of witnesses before him, the District Magistrate may exercise the powers conferred on him under the Code of Criminal Procedure for the time being in force for enforcing the attendance of accused persons and witnesses in cases triable by him.

7. (1) When the requisitioning authority, while making the requisition, requests that the person to be requisitioned may be released on bail for his appearance before a person or authority indicated in this behalf in the requisition at a specified time and place or when the offence in respect of which extradition is claimed is bailable and the District Magistrate, is, after examination of the *prima facie* evidence, satisfied that a *prima facie* case is made out against such person, he shall, in the warrant issued under sub-section (4) of section 6, direct that such person shall be released from custody, if he executes a bond with such surety as he may fix for his appearance before the person and at the time and place named in the requisition.

When person to be surrendered may be released on bail.



(2) Where security is taken under this section and the person requisitioned is so released, the District Magistrate shall retain the bond and intimate the fact to the requisitioning authority through the Government.

(3) If the person bound by any such bond does not appear at the time and place specified, the District Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorised by the requisitioning authority to take him into custody.

(4) In the case of any bond executed under this section, the District Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

8. Where a requisition is made to the Government :—

(a) by or on behalf of the Government of India or the Government of an Indian State in extradition alliance with the Jammu and Kashmir State for the surrender of a person accused of having committed an offence other than an extradition offence ; or

(b) by or on behalf of the Government of an Indian State not in extradition alliance with the Jammu and Kashmir State for the surrender of a person accused of having committed any offence ;  
such requisition shall (except in so far as it relates to the taking of evidence to show that the offence is of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of a foreign State as if it were a requisition made by any such Government under that section.

9. (1) If it appears to the District Magistrate that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in British India or in an Indian State and that such person may lawfully be surrendered to British India or such State or that a warrant may be issued for his arrest under section 6, the District Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of warrant if the offence had been committed



within the local limits of his jurisdiction.

(2) The District Magistrate shall forthwith report the  
Issue of warrant to be reported forthwith. issue of a warrant under this section to the Government.

(3) A person arrested on a warrant issued under this  
Limit of time of determination of person arrested. section shall not, without the special sanction of the Government, be detained more than two months, unless within such period the District Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 8, or a warrant for the arrest of such person under section 6.

(4) In the case of a person arrested or detained under  
Bail. this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in the State the offence with which he is charged.

10. (1) A person accused of an offence committed in the  
Surrender of person accused of or undergoing sentence for offence in the Jammu and Kashmir State. Jammu and Kashmir State, not being the offence for which his surrender is asked, or undergoing sentence under any conviction in the State, shall not be surrendered in compliance with a requisition made by or on behalf of British India or an Indian State under section 6 or section 8 except on the condition that such person be resurrendered to the State on the termination of his trial for the offence for which his surrender has been asked :

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

(2) On the surrender of a person undergoing sentence  
Suspension of sentence on surrender. under a conviction in the State his sentence shall be deemed to be suspended until the date of his surrender when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

11. The provisions of this Chapter with reference to  
Application Chapter to persons. accused persons shall, with any necessary modifications, apply to the case of a person who having been convicted of an offence in British India or an Indian State has escaped into or is in the State before his sentence has expired.

12. Every person who is accused or convicted of abetting  
Abetment and attempt. or attempting to commit any offence shall be deemed, for the purposes of this



Chapter to be accused or convicted of having committed, such offence, and shall be liable to be arrested and surrendered accordingly.

13. It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter to receive, hold in custody and convey the person mentioned in warrant, to the place named in the warrant and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be retaken, as a person, accused of an offence against the law of the State, may be retaken upon an offence.

14. The Government may by order stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

15. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a Court of the Jammu and Kashmir State has concurrent jurisdiction.

16. (1) In any proceedings under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of Justice outside the State or copies thereof and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated :—

(a) if the warrant purports to be signed by a judge, Magistrate or officer of the Government in whose territory the same was issued or acting in the territories of or for such Government ;

(b) if the depositions or statements or copies thereof purport to be certified under the hand of a judge, Magistrate or officer of the Government in whose jurisdiction the same were taken, or acting in the territories of or for such



Government, to be the original depositions or statements or to be true copies thereof as the case may require ;

(c) if the certificate of a judicial document stating the fact of a conviction purports to be certified by a judge, Magistrate or officers of the Government in whose jurisdiction the conviction took place or acting in the territories of or for such Government ;

(d) if the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of District Judge of that Government where the same were respectively issued, taken or given.

(3) For the purposes of this section "warrant" includes any judicial document authorising the arrest of any person accused or convicted of an offence.

Definition of warrant.

17. Nothing in this Chapter shall derogate from the provisions of any treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be deemed to have been modified accordingly.

Chapter not to derogate from treaties.

## CHAPTER IV.

### EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OF BRITISH INDIA AND INDIAN STATES.

18. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in British India or any Indian State in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding.

Execution of commissions issued by Criminal Courts of British India and Indian States.

## CHAPTER V.

### SUPPLEMENTAL.

19. (1) The Government may make rules to carry out the purposes of this Act.

Power to make rules.



(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them ;

(b) the seizure and disposition of any property which is the subject of, or, required for proof of, any alleged offence in which this Act applies ;

(c) the pursuit and arrest in the Jammu and Kashmir State by the officers of the Government or other persons authorised in this behalf, of persons accused of offences committed elsewhere ; and

(d) the procedure and practice to be observed in extradition proceedings.

20. Notwithstanding anything in the Code of Criminal Procedure, 1989, any person arrested, without a warrant and without an order from a Magistrate, in pursuance of the provisions of section 54, clause seventh of the said Code, may, under the orders of a District Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued under section 9 of this Act.

21. The Extradition Rules No. IV of 1976 and all Rules, orders and Hidayats relating to extradition heretofore in force are hereby repealed in so far as they are inconsistent with this Act.

## THE SCHEDULE.

(*Vide* section 2)

The sections referred to below are the sections of the Indian Penal Code :—

Fraud upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (sections 230 to 263-A).

Culpable homicide (sections 299 to 304).

Attempt to murder (section 307).

Thagi (sections 310 and 311).

Causing miscarriage and abandonment of child (sections 312 to 317).



Causing hurt (sections 323 to 333).  
 Wrongful confinement (sections 347 and 348).  
 Kidnapping and slavery (sections 360 to 373).  
 Rape and unnatural offences (sections 375 to 377).  
 Theft, extortion, robbery etc. (sections 378 to 414).  
 Cheating (sections 415 to 420).  
 Fraudulent Deeds, etc. (sections 421 to 424).  
 Mischief (sections 425 to 440).  
 Lurking House Trespass (sections 443 to 444).  
 Forgery, using forged documents (sections 463 to 477-A).  
 Enticing or taking away or detaining with criminal intent a married woman (section 498).  
 Desertion from any unit of Indian State Forces declared by the Governor General in Council by notification in the Gazette of India to be a unit desertion from, which is an extradition offence.  
 Desertion from any unit of army in India.  
 Piracy by law of nations.  
 Offences under the Criminal Tribes Act (III of 1911)  
 Offence under the Defence of India Act, 1939 or rules made thereunder.  
 Any offence against any section of the Indian Penal Code or against any other law which may from time to time be specified by the Government by notification in the Government Gazette either generally or particularly with regard to British India or any Indian State.

## **THE CHILDREN'S COURT ACT, 2003.**

### **Act No IV of 2003.**

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| <p>9. Establishment of a separate Children's Court.</p> <p>10. No disqualification entailed on a child offender on account of conviction.</p> | <p>11. Not to allow child prisoners to come in contact with adult prisoners.</p> <p>12. Imparting education to child prisoners.</p> |
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## THE CHILDREN'S COURT ACT, 2003.

### Act No. IV of 2003.

*[Received the assent of His Highness the Maharaja Bahadur on 15th July, 1946. and published in the Government Gazette dated 22nd Katik 2003/7th November 1946]*

WHEREAS it is found that bad effects are produced on the minds, bodies and morals of children of tender age by reason of association with adult-prisoners in the Jail ;

Preamble.

And Whereas it is desirable to make special provisions for the trial of criminal cases in which children are accused persons, and for regulating the manner of their custody with a view to uplift their moral, mental and industrial education and generally for the protection of children ;

It is hereby enacted as follows :—

1. (1) This Act may be called The Children's Court Act, 2003.

Short title, extent and commencement.

(2) It shall extend to the whole of the State.

(3) It shall come into force from such date as the Government may appoint in this behalf.

2. The provisions of any other Act in force contrary to the provisions of this Act, shall not affect or limit these provisions, unless any one of these latter are expressly superseded or modified.

Provisions of other Acts not to affect these provisions.

3. "Child" means a person under the age of sixteen years.

Interpretation.

4. This Act shall apply during trial in case of all accused persons who are children at the commencement of their trial before the Court whether they continue to be such children thereafter or not.

Act applicable in case of children who are such at the commencement of proceedings.



5. Every Criminal Court when hearing charges against children for offences whether under the Code of Criminal Procedure or any other law in force shall sit either in a different building or a different room, from that in which ordinary sittings of Court are held, or on different days or at different times from those at which ordinary sittings are held. The Court so sitting shall be regarded as a Children's Court.

6. A Criminal Court hearing charges against children in the capacity of Children's Court shall :—  
 Some arrangements to be made for the trial of child-accused.

(a) ordinarily give preference to cases against children over any other case ;

(b) make provisions for preventing a child-accused while being conveyed to or from the Court or while waiting in the Court premises before or after hearing off the case from being associated with adult-accused persons ;

(c) allow to Police Officer in uniform, and no person other than the members and the Officers of the Court and the parties to the case, their *Vakils* and other persons directly concerned in the case, and the parents and guardians or the nearest relatives of the accused, to attend the Court except by its leave ;

(d) not make an accused child stand in the prisoner's dock.

7. (1) In any case where a child is accused of an offence whether bailable or not, the Court may, instead of taking bail from the child, release him either before or during trial on a recognizance entered into by his parents or guardian for producing him as the Court may direct.

(2) If the parent or the guardian of the child accused

(a) is not residing , or

(b) has no immovable property,

within the territories of the State,

the Court shall, instead of taking personal recognizance, from such parent or guardian, ask him to furnish a surety residing within the State for the amount to be fixed by the Court.

(3) If the person entering into recognizance or giving a surety-bond as above fails to produce the child according to terms of the surety-bond—

(a) the provisions of Chapter XLII of the Criminal Procedure Code shall apply to recognizance or surety-bond, as the case may be, and

(b) the Court may issue a warrant for the arrest of the accused.



Certain sentences prohibited.

8. A Criminal Court shall not—

(a) sentence a convicted child who has not completed his twelfth year to imprisonment in Jail, or,

(b) pass a sentence on any convicted child of

(1) death,

(2) imprisonment for life, or

(3) confiscation of his property.

9. (1) The Government may within any specified area

Establishment of a specially invest any Magistrate of the first separate Children's Court. class with all the powers exercisable by a Magistrate of the first class under this Act. A Magistrate who is so specially invested with such power will be called "Children's Court."

(2) When such Court is established under sub-section (1), all other Magistrates within the specified area shall cease to exercise jurisdiction in cases where a child-accused is tried singly or jointly with an adult co-accused.

10. (1) The conviction of a child-offender shall entail no disqualification on him.

No disqualification entailed on a child offender on account of conviction.

(2) But such conviction will not prevent the Court from taking it into consideration for the purpose of inflicting greater punishment on the accused according to law on the repetition of an offence.

11. The officers of a Jail shall keep child-prisoners

Not to allow child-prisoners to come in contact with adult prisoners. quite apart from adult-prisoners in the absence of any special reasons, and shall so manage that they will not come in contact with the latter on any

account.

12. The Inspector General of Prisons shall as far as

Imparting education to child-prisoners. possible provide for the education of the child-prisoners in the Jail. Such education may be literary, industrial or agricultural.



# THE JAMMU AND KASHMIR SUPPRESSION OF INDECENT ADVERTISEMENT ACT, 2003.

## Act No. IX of 2003.

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| 2. Interpretation.  |  |
| 3. Procedure against persons affixing etc., indecent pictures, printed or written.        | 6. Police officer may arrest on view of offence.   |
| 4. Proceedings against persons sending others to do the acts, punishable under section 3. | 7. Saving.   |

# THE JAMMU AND KASHMIR SUPPRESSION OF INDECENT ADVERTISEMENTS ACT, 2003.

## Act. No. IX of 2003.

*[Received the assent of His Highness the Maharaja Bahadur on 15th of July, 1946 and published in the Government Gazette dated 22nd Katik, 2003/7th November, 1946.]*

### An Act to Suppress Indecent Advertisements.

**WHEREAS** it is expedient to suppress indecent advertisements in the Jammu and Kashmir State ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir  
Short title, extent and commencement. Suppression of Indecent Advertisements  
 Act, 2003.

(2) It shall extend to the whole of the Jammu and Kashmir State.

(3) It shall come into force from such date as the Government may, by notification in the Jammu and Kashmir Government Gazette, appoint in this behalf.

2. For the purpose of this Act any advertisement  
Interpretation. relating to syphilis, gonorrhea, nervous debility or other complaint or infirmity arising from or relating to sexual



intercourse shall be deemed to be printed or written matter of an indecent nature.

3. Whosoever affixes to, inscribes or stencils on any house, building, wall, boarding, gate, fence, pillar, post, board, tree, or any other thing whatsoever so as to be visible to a person being in or passing along any street, public highway or footpath and whoever affixes to, inscribes or stencils on any public latrine or urinal or exhibits to public view in the window of any house or shop any picture, or printed or written matter which is of indecent nature, shall, on conviction, be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

(2) Whenever any printed or written matter of any indecent nature has been displayed in the manner prohibited by sub-section (1), any person being in possession or control of the land, building, structure or premises to which such printed or written matter has been affixed, who knowingly allows the same to be continued to be displayed, shall, on conviction, be punished with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

4. Whoever gives or delivers to any other person any such pictures, or printed or written matter mentioned in section 3 with the intent that the same, or some one or more thereof, should be affixed, inscribed, stencilled, or exhibited as therein mentioned, shall, on conviction, be punished with imprisonment of either description which may extend to one year or with fine which may extend to one thousand rupees, or with both.

5. If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any picture or printed or written matter of any indecent nature which has been affixed, inscribed or stencilled as mentioned in section 3 continues to be exhibited to public view after the commencement of this Act, he may, by order in writing, authorise any police officer to enter, with such assistance as may be required, any place and seize, remove, deface or destroy any such picture or printed or written matter.

6. Any police officer may arrest without warrant any person whom he shall find committing any offence against this Act.

Procedure against persons affixing etc. indecent pictures, printed or written matter.

Proceedings against persons sending others to do the acts punishable under section 3.

Power to seize, remove, deface or destroy pictures, or printed or written matter of indecent nature.

Police officer may arrest on view of offence.



7. Nothing in this Act shall apply to any advertisement published by any Municipal Committee or by any Town or Notified Area Committee or published with the sanction of the Government.

## THE TRANSFER OF LAND VALIDATION ACT, 2003.

Act No. XIV of 2003.

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| 2. Definition.                           | 4. Saving.                         |

## TRANSFER OF LAND VALIDATION ACT, 2003.

Act No. XIV of 2003.

*[Received the assent of His Highness the Maharaja Bahadur on 14th October, 1946 and published in the Government Gazette, dated 16th Katik, 2003/1st November 1946.]*

**An Act to validate certain transfers of land made by oral agreements or unregistered deeds.**

WHEREAS according to sub-section (1) of section 138 of the Transfer of Property Act, 1977, transfers of land except in cases governed by any special law to the contrary, are not valid unless and until the instruments by which they are effected are in writing and registered ;

Preamble.

And whereas on the authority of some provisions of the Revenue Department Standing Order No. 23-A, issued with the sanction of His Highness the Maharaja Bahadur, there



has been general assumption in certain quarters that transfers of land by oral agreements or unregistered deeds when mutation thereof is sanctioned, are also valid ;

And whereas under such assumption a very large number of transfers of land by oral agreements or unregistered deeds have been made and mutations thereof have been duly sanctioned ;

And whereas doubts have recently arisen as to the correctness of such assumption ;

And whereas such transfers of land by oral agreements or unregistered deeds have been called into question ;

And whereas parties to such transfers believed in good faith that transfers made by oral agreements or unregistered deeds were valid ;

And whereas it is expedient that such transfers should be validated to avoid the hard consequences which are otherwise likely to follow ;

It is hereby enacted as follows :—

1. (i) This Act may be called the Transfer of Land Validation Act, 2003.

Short title, extent and commencement.

(ii) It shall extend to the whole of the Jammu Province.

(iii) It shall come into force at once.

2. "Land" in this Act has the meaning assigned to it in the Alienation of Land Act, 1995.

Definition.

3. Notwithstanding anything contained in sub-section (1) of section 138 of the Transfer of Property Act, 1977, all transfers of land made before this Act comes into force, by oral agreements or, if in writing by unregistered deeds, mutations whereof have been duly sanctioned and not subsequently set aside by any competent authority shall be deemed to have the same effect as if they were in writing and registered in accordance with the provisions of the Registration Act, 1977.

Validation of transfer of land.

4. Nothing contained in this Act shall affect the decision of a Court of competent jurisdiction which has become final before the commencement of this Act.

Saving.



# THE JAMMU AND KASHMIR PUBLIC SECURITY ACT, 2003.

## Act No. XV of 2003.

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40. Power to make rules.

**THE JAMMU AND KASHMIR PUBLIC SECURITY ACT, 2003.**

**Act No. XV of 2003.**

*[Received assent of His Highness the Maharaja Bahadur on 14th October 1946 and published in the Government Gazette dated 22nd Maghar, 2003/7th December 1946].*

**An Act to supplement the criminal law for the purpose of securing public safety and interest.**

WHEREAS it is expedient to supplement the criminal law for the purpose of securing the public safety and interest; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Jammu and Kashmir Public Security Act, 2003.

Short title, extent and duration.

- (2) The Government may by notification in the Government Gazette, from time to time, apply all or any of the provisions of this Act to the whole or any part of the State and may cancel or modify such notification from time to time.

2. In this Act unless there is anything repugnant in the subject or context—

Definitions.

- (1) "the Code" means the Code of Criminal Procedure,



(2) (a) "association" means any combination or body of persons whether the same be known by any distinctive name or not, and

(b) "unlawful association" means an association—

(i) which encourages or aids persons to commit acts of violence or intimidation or the members of which habitually commit such acts, or

(ii) which has been declared to be unlawful by the Government under the powers conferred under this Act ;

(3) "notified place" means a place which has been notified under section 14 ;

(4) (i) "public meeting" means a meeting which is open to the public or any class or portion of the public ;

(ii) a meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

## CHAPTER II.

### SPECIAL POWERS OF ARREST, DETENTION AND SEARCH.

3. (1) Any officer of the Government, authorised in <sup>Power to arrest and</sup> this behalf, by general or special order of <sup>detain suspected person,</sup> the Government, may, if satisfied that there are reasonable grounds for believing that any person has acted, is acting, or is about to act in a manner prejudicial to the public safety or peace, himself arrest such person without warrant, or may direct the arrest without warrant of such person and in making such arrest, may use any means that may be necessary to effect the arrest.

(2) An arrest made by or on the direction of any officer under this section shall be reported forthwith to the Government by the officer so making or so directing the arrest, as the case may be, and such officer may, by order in writing, commit any person so arrested to such custody as the Government may, by general or special order, specify in this behalf and such person shall be placed under personal restraint during the pleasure of the Government :

Provided that no person shall, unless the Government by special order otherwise directs, be so detained in custody for a period exceeding two months.

(3) Any order passed by an officer under sub-section (1) may be revised by the Government.



4. (1) The Government, if satisfied that there are reasonable grounds for believing that any person <sup>Power to control suspected persons.</sup> has acted, is acting, or is about to act in a manner prejudicial to the public safety or peace or in furtherance of a movement prejudicial to the public safety or peace, may, by order in writing, give any one or more of the following directions, namely, that such person:—

(a) shall not enter, reside or remain in any area specified in the order ;

(b) shall reside or remain in any area specified in the order ;

(c) shall remove himself from, and shall not return to, any area specified in the order ;

(d) shall conduct himself in such manner, abstain from such acts, or take such order with any property in his possession or under his control, as may be specified in the order.

(2) An order made under sub-section (1) shall not, unless the Government by special order otherwise directs, remain in force for more than six months from the making thereof.

(3) An order made under sub-section (1) shall be served on the person to whom it relates in the manner provided in the Code for service of a summons.

5. (1) The District Magistrate may, by order in writing, <sup>Power to prohibit or regulate traffic.</sup> prohibit or regulate, in such way as he may think necessary in the interests of the public safety or peace, traffic over any road, pathway, bridge, water way or ferry.

(2) Whoever disobeys, or neglects to comply with, an order made under this section shall be punishable with imprisonment which may extend to 6 months, or with fine, or with both.

6. The District Magistrate, if in his opinion it is necessary in the interests of the public safety or peace may, by order in writing, <sup>Power to secure reports of public meetings</sup> depute one or more police officers not below the rank of Sub-Inspector, or other persons, to attend any public meeting for the purpose of causing a report to be made of the proceedings, and may by such order authorise the persons so deputed to take with them an escort of police officers.

7. The power to issue search warrants conferred by <sup>Power to issue search warrants,</sup> section 98 of the Code shall be deemed to include a power to issue warrants authorising—

(a) the search of any place in which any Magistrate mentioned in that section has reason to believe that any



offence under this Act or any act prejudicial to the public safety or peace has been, is being, or is about to be committed, or that preparation for the commission of any such offence or act is being made ;

(b) the seizure in or on any place searched under clause (a) of any thing which the officer executing the warrant has reason to believe is being used, or is intended to be used, for any purpose mentioned in that clause ;

and the provisions of the Code shall, so far as may be, apply to searches made under the authority of any warrant issued, and to the disposal of any property seized, under this section.

8. Whoever publishes, circulates, sells, or repeats in public any passage from, a newspaper, book or other document, copies whereof have been declared forfeited to His Highness under any law for the time being in force, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

9. (1) If any person disobeys or neglects to comply with an order made, direction given, or condition prescribed, in accordance with the provisions of this Chapter, the authority which made the order, gave the direction, or prescribed the condition, may take or cause to be taken such action as it thinks necessary to give effect thereto.

(2) No claim for compensation may be lodged for loss or damage caused in any case where action has been taken under sub-section (1).

10. Whoever disobeys or neglects to comply with any order made or direction given in accordance with the provisions of section 4 shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

### CHAPTER III.

#### UNLAWFUL ASSOCIATION.

11. If the Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order or that it constitutes a danger to the public peace, the Government may, by notification in the Government Gazette declare such association to be unlawful.



12. (1) Whoever is a member of an unlawful association or takes part in meeting of any such association or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes, or assists in promoting, meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

13. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

14. (1) The Government may, by notification in the Government Gazette, notify any place which in its opinion is used for the purposes of an unlawful association.

(2) The District Magistrate, or any officer authorised in this behalf in writing by the District Magistrate, may thereupon take possession of the notified place and evict therefrom any person found therein, and shall forthwith make a report of the taking of possession to the Government :

Provided where such place contains any apartment occupied by women and children, reasonable time and facilities shall be afforded for their withdrawal with the least possible inconvenience.

(3) A notified place whereof possession is taken under sub-section (2) shall be deemed to remain in the possession of the Government so long as the notification under sub-section (1) in respect thereof remains in force.

15. (1) The District Magistrate or other officer taking possession of a notified place shall also take possession of all movable property found therein and shall make a list thereof and submit it, with a report of the taking of possession of such movable property, to the Government.

(2) If, in the opinion of the Government, any article specified in the list is or may be used for the purpose



of the unlawful association, the Government may, by order in writing declare such article to be forfeited to His Highness and may give such directions for the disposal thereof as it may think fit.

(3) All other articles specified in the list which are not so forfeited shall be delivered by the District Magistrate to the person whom he considers to be entitled to possession thereof, or if no such person is found shall be disposed of in such manner as the District Magistrate may direct.

16. Any person who enters or remains upon a notified place without the permission of the District Magistrate or of an officer authorised by him in this behalf, shall be deemed to commit criminal trespass, and notwithstanding anything contained in the Code any such offence of criminal trespass shall be cognizable and non-bailable.

17. Before a notification under sub-section (1) of section 14 is cancelled, the Government shall give such general or special directions as it may deem requisite regulating the relinquishment by the Government of possession of notified places.

18. (1) Where the Government is satisfied, after such inquiry as it may think fit, that any moneys, securities or credits are being used or are intended to be used for the purposes of an unlawful association, the Government may, by order in writing, declare such moneys, securities or credits to be forfeited to His Highness.

(2) A copy of an order under sub-section (1) may be served on the person having custody of the moneys, securities or credits, and on the service of such copy such person shall pay or deliver the moneys, securities or credits to the order of the Government.

Provided that in the case of moneys or securities, a copy of the order may be endorsed for execution to such officer as the Government may select, and such officer shall have power to enter upon and search for such moneys and securities in any premises where they may reasonably be suspected to be, and to seize the same.

(3) Where the Government has reason to believe that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purposes of an unlawful association, the Government may, by order in writing prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with the same, save in accordance with the written orders of



the Government. A copy of such order shall be served upon the person to whom it is directed.

(4) The Government may endorse a copy of an order under sub-section (3) for investigation to any officer it may select, and such copy shall be warrant whereunder such officer may enter upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys and securities, and make inquiries from such person, or any officer, agent or servant of such person, touching the origin of, dealings in, any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purposes of an unlawful association.

(5) A copy of an order under this section may be served in the manner provided in the Code for the service of a summons, or, where the person to be served is a corporation, company, bank or association of persons, it may be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or association at its registered office, or where there is no registered office at the place where it carries on business.

(6) Where an order of forfeiture is made under sub-section (1) in respect of any moneys, securities or credits in respect of which a prohibitory order has been made under sub-section (3), such order of forfeiture shall have effect from the date of the prohibitory order, and the person to whom the prohibitory order was directed shall pay or deliver the whole of the moneys, securities, or credits forfeited to the order of the Government.

(7) Where any person liable under this section to pay or deliver any moneys, securities, or credits to the order of the Government, refuses or fails to comply with any direction of the Government in this behalf, the Government may recover from such person, as arrears of land revenue or as a fine, the amount of such moneys or credits or the market value of such securities.

(8) In this section, "security" means a document whereby any person acknowledges that he is under a liability to pay money, or whereunder any person obtains a legal right to the payment of money; and the "market value of any security" means the value as fixed by any officer, or person deputed by the Government in this behalf.



# CHAPTER IV.

## PREVENTION OF SEDITION AND CERTAIN OTHER PUBLIC MEETINGS.

19. (1) The Government may, by notification in the Government Gazette, declare the whole or any part of the State to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months ; but nothing in this sub-section shall be deemed to prevent the Government from making any further notification in respect of the same area from time to time as it may think fit.

20. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or for the exhibition or distribution of any writing or printed matter relating to any such subject, shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate at least three days previously ; or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate.

(2) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority or to any public meetings or class of public meetings exempted for that purpose by the Government by general or special order.

21. The District Magistrate may, at any time by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area, if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

22. (1) Any person concerned in promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 20 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Any public meeting which has been prohibited under section 21 shall be deemed to be unlawful assembly within the meaning of Chapter VIII of the Ranbir Penal Code, and of Chapter IX of the Code.



23. Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with or exempted from the provisions of section 20 without the permission in writing of the District Magistrate, previously obtained, delivers any lecture, address, or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

## CHAPTER V.

### PROVISIONS AGAINST CERTAIN FORMS OF INTIMIDATION AND OTHER OFFENCES AND PENALTIES.

Molesting a person to  
prejudice of employment  
or business.

24. (1) Whoever.—

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or persons in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place or interferes with any property owned or used by him or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.*—Encouragement of indigenous industries or advocacy of temperance without the commission of any of the acts prohibited by this section is not an offence under this section.

(2) No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by a Police officer not below the rank of Sub-Inspector.



25. (1) The Government may, by notification in the Government Gazette, declare that any offence punishable under sections 186, 188, 190, 228, 298, 384, 426, 427, 505, 506 or 507 of the Ranbir Penal Code when committed in any area specified in the notification shall, notwithstanding anything contained in the Code, be cognizable, and thereupon the Code shall, while such notification remains in force, be deemed to be amended accordingly.

(2) The Government may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under section 188 or section 506 of the Ranbir Penal Code shall be non-bailable.

26. Whoever with intent to intimidate, insult, or annoy any person, or with the knowledge that intimidation, insult or annoyance is likely to be caused to any person, performs, or takes part in, or, abets performance of, any mock ceremony resembling any ceremony associated with or consequent upon death, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

27. Whoever induces or attempts to induce any public servant to fail in his duty as such servant shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

*Explanation.*—For the purposes of this section a public servant denotes a public servant as defined in the Ranbir Penal Code, a servant of a local authority, a village chowkidar and an employee of a public utility service which means—

- (i) any postal, telegraph or telephone service ; or
- (ii) any industry, business or undertaking which supplies light or water to the public ; or
- (iii) any system of public conservancy or sanitation.

28. (1) Whoever with intent to harass any public servant in the discharge of his duties, or to cause him to terminate his services or fail in his duty, refuses to deal with, whether by supplying goods to, or otherwise or to let on reasonable rent a house usually let for hire or to render any customary service to such public servant or any member of his family, on the terms on which such things would be done in the ordinary course, or withholds from such person or his family such medical service as he would ordinarily render, shall be



punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.*—For the purposes of this section the definition of “public servant” has the same meaning as in section 27.

(2) No Court shall take cognizance of an offence punishable under this section unless upon complaint made by order of or under authority from the Government or some officer empowered by the Government in this behalf.

29. (1) Whoever makes, publishes or circulates any <sup>Dissemination of false statement, rumour or report which is false rumours.</sup> and which he has no reasonable ground to believe to be true, with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public or hatred or contempt towards any class of public servants or any class of the subjects of the State or of British India shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

*Explanation.*—For the purposes of this section public servant means a public servant as defined in the Ranbir Penal Code, 1989.

(2) So long as this section remains in force clause (b) of section 505 of the Ranbir Penal Code, 1989, shall be inoperative.

30. Whoever, with intent to outrage the religious feelings of any section of the subjects of the State or with the knowledge that he is likely so to do, by words, whether spoken or written, or by signs or by visible or audible representations, or otherwise insults or attempts to insult the religion or the religious beliefs of that section shall be punishable with rigorous imprisonment which may extend to two years, or with fine, or with both.

Acts intended or likely to outrage the religious feelings of any section of the people.

31. Whoever does any act, with intent to impair the efficiency or impede the working of, or to <sup>Sabotage.</sup> cause damage to—

(a) any building, vehicle, machinery, apparatus or other property used, or intended to be used for the purposes of Government, or any local authority,

(b) any road, canal, bridge, culvert, causeway, aerodrome, or any telegraph or telephone line or post,

(c) any rolling stock of an aircraft,

(d) any sewage, works, mine or factory, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.



## CHAPTER VI.

SPECIAL PROVISIONS RELATING TO STRIKES  
AND LOCK-OUTS.

32. (1) If, in the opinion of the Government, it is necessary or expedient so to do for securing the public safety, the maintenance of public order or for maintaining supplies and services essential to the life of the community, the Government may, by general or special order, applying generally or to any specified area, and to any undertaking or class of undertakings, make provision—

Avoidance of strikes  
and lock-outs.

(a) for prohibiting, subject to the provisions of the order, a strike or lock-out in connection with any trade dispute ;

(b) for requiring employers to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order ;

(c) for referring any trade dispute for conciliation or adjudication in the manner provided in the order ;

(d) for enforcing, for such period as may be specified in the order, the decisions of the authority to which a trade dispute has been referred for adjudication ;

(e) for any incidental and supplementary matters which appear to the Government necessary or expedient for the purposes of the order :

Provided that no order made under clause (b)—

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order ;

(ii) where a trade dispute is referred for adjudication under clause (c), adjudication shall be enforced after the decision of the adjudicating authority is announced by, or with the consent of, the Government.

(2) Whoever contravenes the provisions of any order made under this section shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) In this section—

(i) “undertaking” means any undertaking by way of trade or business ;

(ii) “employer” in the case of any industry, business



or undertaking carried on by any department of the State, means the authority prescribed in this behalf or where no authority is prescribed, the head of the department ;

(iii) "lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him, where such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons or of aiding another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ;

(iv) "strike" means a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerned refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ; and

(v) "trade dispute" means any dispute or difference between employer and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person.

## CHAPTER VII.

### SUPPLEMENTAL.

33. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Ranbir Penal Code.

Penalty for obstruct-  
ing officers.

34. Notwithstanding anything contained in the Code:—

(i) no Court inferior to that of Magistrate of the First Class shall try any offence against this Act ;

(ii) an offence punishable under sections 22, 26, 29, and 31 shall be cognizable by the Police.

35. (1) The Government may appoint any officer to be a Special Magistrate to try offences under this Act.

Special Magistrate.

(2) Such Special Magistrate and all officers exercising the powers of a First Class Magistrate, a District Magistrate or Additional District Magistrate shall have the power to try cases summarily under this Act.



36. Notwithstanding anything contained in the Code, <sup>Summary trials, appeals and revisions.</sup> offences punishable under sections 22, 26, 29 and 31 of this Act and in any area in which a notification under section 25 is in force any of the Ranbir Penal Code offences specified in the said notification, may be tried under the procedure laid down for the summary trial of offences in the Code and any Magistrate so trying summarily any such case shall be competent to impose a sentence of imprisonment upto a maximum term of three months or such fine as he might legally impose under this Act if he had not tried the case summarily, or both.

(2) The provisions of the Code which provided for appeals, reference and revision shall apply to all sentences imposed for offences under this Act, but such sentences if inflicted in summary trials and not exceeding one month's imprisonment and rupees fifty fine, or, where no substantive sentence of imprisonment is inflicted, not exceeding rupees two hundred fine, shall not be subject to appeal.

37. (1) Where any child under the age of sixteen years is convicted by any Court of an offence punishable under this Act or any other enactment, which offence, in the opinion of the Court, has been committed in the furtherance of a movement prejudicial to the public safety or peace, and such child is sentenced to fine, the Court may order that the fine shall be paid by the parent or guardian of such child as if it had been a fine imposed upon the parent or guardian.

*Explanation.*—In this section the word “guardian” includes any person who, in the opinion of the Court, has for the time being the charge of or control over the offender.

(2) Before making an order under this section the Court shall give the parent or guardian an opportunity to be heard and no such order shall be made if the parent satisfies the Court that he has not conduced to the commission of the offence by neglecting to control the offender, or that the offence was not committed in the furtherance of a movement prejudicial to the public safety or peace.

(3) Where a parent or guardian is ordered to pay a fine under this section, the amount may be recovered in accordance with the provisions of the Code.

38. (1) Where it appears to the Government that the inhabitants of any area are concerned in the commission of offences or other acts which are prejudicial to the maintenance of law and order or to the

<sup>Imposition of collective fine on inhabitants of turbulent areas,</sup>



public revenues, or are harbouring persons concerned in the commission of such offences or acts, the Government may by notification in the Government Gazette impose a collective fine on the inhabitants of that area.

(2) The Government may exempt any person or class of persons from liability to pay any portion of such fine.

(3) The District Magistrate or the Additional District Magistrate after such enquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to his judgment of the respective means of such inhabitants.

(4) The portion of such fine payable by any person may be recovered from him as a fine or as arrears of land revenue.

(5) The Government may award compensation out of the proceeds of a fine realised under this section to any person who, in the opinion of the Government, has suffered injury of person or property by the unlawful acts of the inhabitants of the area.

*Explanation.*—For the purposes of this section the “inhabitants” of an area include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.

39. Except as provided in this Act, no proceeding or order taken or made or purporting to be taken or made or deemed to have been so taken or made under this Act, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything done or in good faith intended to be done under this Act, or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act.

40. (1) The Government may make such rules as may be necessary for carrying out the objects of this Act, and from time to time repeal, alter and add to such rules.

(2) All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the Government Gazette.



# THE JAMMU AND KASHMIR INDUSTRIAL STATISTICS ACT, 2003.

Act No. XXIII of 2003.

## CONTENTS.

Section.	SECTION.
1. Short title, extent and commencement.	or document.
2. Definition.	7. Restriction on the publication of returns and information.
3. Collection of statistics.	8. Penalties.
4. Appointment of statistics authority.	9. Penalty for improper disclosure of information or returns.
5. Power of statistics authority to call for returns and information.	10. Cognisance of offences.
6. Right of access to record	11. Power of Government to make rules.

# THE JAMMU AND KASHMIR INDUSTRIAL STATISTICS ACT, 2003.

Act No. XXIII of 2003.

*(Received the assent of His Highness the Maharaja Bahadur on 14th October, 1946 and published in the Government Gazette dated 16th Maghar, 2003/1114 December, 1946).*

## An Act to facilitate the collection of statistics of certain kinds relating to industries.

WHEREAS it is expedient to facilitate the collection of statistics of certain kinds relating to industries;

It is hereby enacted as follows:—

1. (1) This Act may be called the Jammu and Kashmir Industrial Statistics Act, 2003.

*Short title, extent and commencement.*

(2) It extends to the whole of the Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Jammu and Kashmir Government Gazette, appoint in this behalf.

(4) In this Act "prescribed" means prescribed in rules made under this Act or in any form prescribed by these rules.

*Definition.*



3. (1) The Government may by notification in the Jammu and Kashmir Government Gazette direct that statistics shall be collected relating to any of the following matters, namely:—

- (a) any matter relating to factories ;
- (b) any of the following matters so far as they relate to welfare of labour and conditions of labour, namely:—
  - (i) prices of commodities,
  - (ii) attendance,
  - (iii) living conditions, including housing, water supply and sanitation,
  - (iv) indebtedness,
  - (v) rents of dwelling houses,
  - (vi) wages and other earnings,
  - (vii) provident and other funds provided for labour,
  - (viii) benefits and amenities provided for labour,
  - (ix) hours of work,
  - (x) employment and unemployment,
  - (xi) industrial and labour disputes,

and thereupon the provisions of this Act shall apply to the collection of those statistics.

(2) In clause (a) of sub-section (1) "factory" means a factory defined in clause (a) of section 2 of the Factories Act, 1999, or any premises deemed to be a factory in pursuance of a declaration made under section 5-A of that Act.

4. The Government may appoint an officer to be the statistics authority for the purposes of the collection of any statistics under this Act.

5. (1) The statistics authority may serve or cause to be served on any person a notice requiring him to furnish, at such intervals and in such form and with such particulars as may be prescribed, such information or returns relating to any matter in respect of which statistics are to be collected and to such authority or person and in such manner and at such times as may be prescribed.

(2) The notices referred to in sub-section (1) may be served by post.

6. The statistics authority or any person authorised by him in writing in this behalf shall for the purposes of the collection of any statistics under this Act, have access to any relevant record or document in the possession of any person required to furnish any information or return under this Act, and may enter at any reasonable time any premises wherein he believes such record



or document to be, and may ask any question necessary for obtaining any information required to be furnished under this Act.

7. (1) No individual return, and no part of any individual return made and no information with Restriction on the publication of returns and information. respect to any particular undertaking given for the purposes of this Act, shall without the previous consent in writing of the owner for the time being of the undertaking in relation to which the return or information was made or given, or his authorised agent, be published in such manner as would enable any particular to be identified.

(2) Except for the purposes of a prosecution under this Act, or under the Ranbir Penal Code, no person not engaged in connection with the collection of statistics under this Act, shall be permitted to see any individual return or information referred to in sub-section (1).

8. If any person required to furnish any information or any return—  
Penalties.

(a) wilfully refuses or without lawful excuse neglects to furnish such information or return as required under this Act, or

(b) wilfully furnishes or causes to be furnished any information or return which he knows to be false, or

(c) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act, or if any person impedes the right of access to relevant records and documents or the right of entry conferred by section 6,

he shall for each such offence be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence to a further fine which may extend to two hundred rupees each day after the first during which the offence continues and in respect of false information, returns or answers, the offence shall be deemed to continue until true information or a true return or answer has been given or made.

9. If any person engaged in connection with the collection of statistics under this Act wilfully discloses any information or the contents of any return given or made under this Act Penalty for improper disclosure of information or return. otherwise than in the execution of his duties under this Act, or for the purposes of the prosecution of an offence under this Act, or under the Ranbir Penal Code, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both imprisonment and fine.



10. No prosecution under section 8 shall be instituted except by or with the sanction of the statistics authority and no prosecution under section 9 shall be instituted except by or with the sanction of the Government.

11. (1) The Government may, subject to the condition of previous publication by notification in the Jammu and Kashmir Government Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, rules may be made under this section regulating the exercise of the right of access to documents and the right of entry conferred by section 6.

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# **LAWS OF JAMMU AND KASHMIR.**

(Being a collection of all the enactments, whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State.)

## **SUPPLEMENT 2000.**



*Published under authority of His Highness' Government,  
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**JAMMU :**

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**Prefaratory Note.**

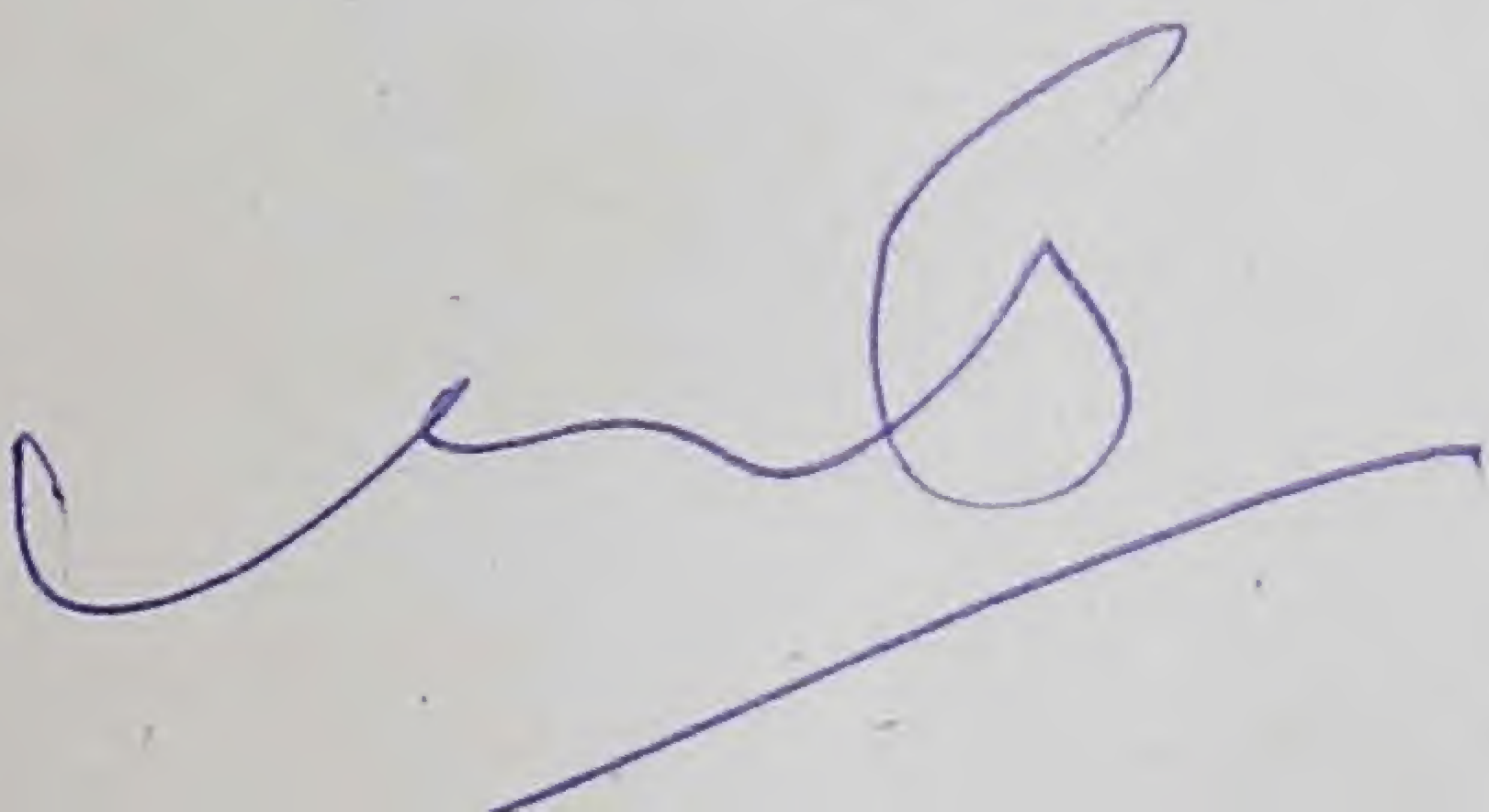
Supplement for S. 2000 to the Laws of Jammu and Kashmir is published to make the laws up-to-date. It contains all the Acts of Samvat year 2000. It is proposed to issue every year an annual supplement until a revised edition of the Laws of Jammu and Kashmir is published.

Correction slips for every year issued by the Law Department are supplied by the Press on moderate price.

(Sd.) BADRI NATH,

*Deputy Legal Remembrancer.*

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**THE JAMMU AND KASHMIR SUGAR  
(EXCISE DUTY) ACT, 2000.**

**Act No. VI of 2000.**

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**THE JAMMU AND KASHMIR SUGAR (EXCISE DUTY)  
ACT, 2000.**

**Act No. VI of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 21st Sawan 2000/5th August 1943.]*

**An Act to provide for the imposition and collection of excise duty on sugar.**

WHEREAS it is expedient to impose an Excise Duty on sugar produced in factories and to provide for the collection thereof ; It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Sugar (Excise Duty) Act, 2000.

Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.



(3) The Act shall come into force on such date as the Government may by notification in the Government Gazette appoint in this behalf.

**2.** In this Act unless there is anything repugnant in the subject or context,—

Definitions.

(a) “factory” means any premises in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power ;

(b) “owner” includes any person expressly or impliedly authorised by the owner of a factory to be his agent in respect of such factory ;

(c) “sugar” means any form of sugar containing more than ninety per cent of sucrose ;

(d) “khandsari sugar” means sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed ; and

(e) “palmyra sugar” means sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm.

**3.** (1) A duty of excise shall be levied on all sugar produced in any factory in the State and either issued out of such factory on or after the day of coming into force of this Act, or used within such factory on or after the said date in the manufacture of any commodity other than sugar, and shall be payable by the owner of the factory.

(2) The duty payable under sub-section (1) shall be at the following rates, namely :—

(i) on khandsari sugar at the rate of two rupees and twelve annas per maund ;

(ii) on all other sugar except palmyra sugar at the rate of three rupees and four annas per maund ;

(iii) on palmyra sugar at such rate, if any, as may be fixed in this behalf by the Government after such enquiry as they may think fit.

**4.** (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding double the amount of duty unpaid which such authority may in its discretion think it reasonable to require.

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of



land revenue and shall be recoverable in addition to, and not in substitution for, any other penalty incurred under this Act.

**5.** No person shall issue any sugar out of a factory except Issue of sugar from factory. in accordance with the provisions of rules made in that behalf under this Act, or, until such rules are made in accordance with the general or special orders of the Government.

**6.** Whoever contravenes the provisions of section 5 shall be punishable with fine which may extend to two thousand rupees. Penalty for issue of sugar from factory in contravention of section 5

**7.** Whoever evades or attempts to evade the payment of any duty payable by him under this Act, or fails to supply any information which he is required by any rule made under this Act to supply, or knowingly supplies false information, shall be punishable with imprisonment, which may extend to six months or with fine which may extend to two thousand rupees, or with both. Penalty for evasion of duty or failure to supply information.

**8.** Any Court trying an offence under this Act may order that any sugar, together with the packages or coverings thereof, in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Highness the Maharaja Bahadur. Power of Court to order forfeiture of sugar.

**9.** The Government may, by notification in the Government Gazette, declare that any of the provisions of the Jammu and Kashmir Customs Act, 1958 relating to the levy of and exemption from customs duties, drawback of duty, warehousing offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adopt them to the circumstances, be applicable in regard to like matters in respect of the duty on sugar imposed by section 3. Application of the provisions of Customs Act to the duty on sugar.

**10.** (1) The Government may by notification in the Government Gazette, make rules to carry into effect the purposes and objects of this Act. Power of Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment



the manner in which the duty shall be payable, and the recovery of arrears ;

(b) regulate the issue of sugar out of or the use of sugar in the manufacture of commodities within any factory and provide for the appointment of officers of the State to supervise within any factory such issue or use ;

(c) impose on the owners of factories, and on persons engaged in the sale of sugar, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified ;

(d) provide for the detention of sugar for the purpose of exacting the duty, the confiscation otherwise than under section 8 of sugar in respect of which breaches of the Act or rules have been committed and the disposal of sugar so detained or confiscated ;

(e) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of sugar ; and

(f) authorise and regulate the composition of offences against or liabilities incurred under the Act and rules.

(3) In making any rule under this section the Government may provide that a breach of the rules shall, where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees.

## **THE WORKMEN'S COMPENSATION ACT, 2000.**

### **Act No. VII of 2000.**

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**THE WORKMEN'S COMPENSATION ACT, 2000.****Act No. VII of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 28th Sawan 2000/12th August 1943.]*

**An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.**

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; It is hereby enacted as follows:—

Preamble.

**CHAPTER I.****PRELIMINARY.**

**1.** (1) This Act may be called the Workmen's Compensation Act, 2000.

Short title

(2) It extends to the whole of the Jammu and Kashmir State.

Extent.

**2.** (1) In this Act unless there is anything repugnant in the subject or context:—

Definitions.

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of 15 years;

(b) "commissioner" means a commissioner appointed for workmen's compensation under section 20;

(c) "compensation" means compensation as provided for by this Act;

(d) "dependant" means any of the following relatives of a deceased workman, namely,—

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly or in part dependent on the earnings of the workman at the time of his death, a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter



in-law, a minor child of a deceased son, a minor child of a deceased daughter where no parent of the child is alive, or where no parent of the workman is alive a paternal grandparent ;

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into contract of service or apprenticeship means such other person while the workman is working for him ;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager sub-ordinate to an employer ;

(g) "partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time ; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement ;

(h) "prescribed" means prescribed by rules made under this Act ;

(i) "qualified medical practitioner" means any person registered under the Jammu and Kashmir Medical Registration Act, 1998 ;

(j) "total disablement" means such disablement whether of a permanent or of a temporary nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement ; provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity, as specified in that schedule against those injuries, amounts to one hundred per cent ;

(k) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman



to cover any special expenses entailed on him by the nature of his employment ;

(1) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is on monthly wages not exceeding one hundred rupees in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of His Highness' Forces and any reference to a workman who has been injured shall, when the workman is dead, include a reference to his dependents, or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government, shall for the purposes of this Act, unless a contrary intention appears be deemed to be the trade or business of such authority or department.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may by a like notification add to Schedule II any class of persons employed in any occupation which they are satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply to such class of persons :

Provided that in making such addition the Government may direct that the provisions of this Act shall apply to such classes of persons for specified injuries only.

## CHAPTER II.

### WORKMEN'S COMPENSATION.

**3.** (1) If personal injury is caused to a workman by Employer's liability for compensation. accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter, provided that the employer shall not be so liable :—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days ;

(b) in respect of any injury not resulting in death caused by an accident which is directly attributable to :—

(i) the workman having been at the time thereof



- under the influence of drink or a drug, or
- (ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) If a workman employed in any employment specified in part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

*Explanation.*—For the purpose of this sub-section, a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided in sub-sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other



person ; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury :—

(a) if he has instituted a claim to compensation in respect of the injury before a commissioner ; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

4. (1) Subject to the provisions of this Act the amount of compensation shall be as follows, *viz* :—

A. where death results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor—two hundred rupees.

B. Where permanent total disablement results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(ii) in the case of a minor—twelve hundred rupees.

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury ; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

*Explanation.*—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which should have been payable if permanent total disablement has resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the 10th day after the expiry of a waiting period of seven days from the date of the disablement, and there-



after half-monthly during the disablement or during a period of five years, whichever period is shorter—

- (i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III of the sum shown against such limits in the fourth column thereof, and
- (ii) in the case of a minor of one-half of his monthly wages subject to a maximum of thirty rupees :

Provided that (a) there shall be deducted from any lump-sum or half monthly payments to which the workman is entitled, the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half month a sum proportionate to the duration of the disablement in that half month.

**5.** For the purposes of this Act the monthly wages of a workman shall be calculated as follows, namely :—

Method of calculating wages.

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of a workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or if there was no workman so employed, by a workman employed on similar work in the same locality ;

(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous



period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

*Explanation.*—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

**6.** (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a commissioner may be reviewed by the commissioner, on the application of either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lumpsum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

**7.** Any right to receive half-monthly payments may, by agreement between the parties, or if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the commissioner, as the case may be.

**8.** (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependent, shall be deducted by the commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees



which is payable as compensation may be deposited with the commissioner on behalf of the person entitled thereto.

(3) The receipt of the commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the commissioner shall deduct therefrom the actual costs of the workman's funeral expenses to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred and shall, if he thinks necessary, cause notice to be published or to be served on each dependent in such manner as he thinks fit calling upon the dependents to appear before him, personally or through some attorney, or for determining the distribution of compensation. If the commissioner is satisfied, after any inquiry which he may deem necessary that no dependent exists he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application, by the employer, furnish a statement showing in details all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependents of the deceased workman or any of them in such proportion as the commissioner thinks fit or may in the discretion of the commissioner be allotted to any one dependent.

(6) When any compensation deposited with the commissioner is payable to any person, the commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump-sum deposited with the commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability the commissioner may of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependent of the workman or to any other person whom the commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or any



other sufficient cause, an order of commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with ought to be varied the commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependent of any sum already paid to him.

(9) Where the commissioner varies any order under sub-section (8) by reason of the facts that payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

**9.** Save as provided by this Act, no lump-sum of half-monthly payment under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

**10.** (1) No claim for compensation shall be entertained by a commissioner unless notice of the accident has been given, in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within one year of the occurrence of the accident or, in case of death within one year from the date of death :

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided further that the want of or any defect, or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if a claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the



workman died on such premises or at such place or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of the several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred :

Provided further, that the commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to injured workman employed on the premises and to any person acting *bonafide* on his behalf.

(4) A notice under this section may be served by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served, or where a notice book is maintained by entry in the notice book.

**11.** (1) Where a commissioner receives information from

Power to require from employers statements regarding fatal accident

any source that a workman has died as a result of an accident arising out of and in the course of his employment he may send

by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation he shall make the deposit within thirty days of the service of notice.



(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the commissioner after such inquiry as he may think fit, may inform any of the dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may think fit.

**12.** (1) Where, by any law for the time being in force, <sup>Report of fatal ac-</sup> notice is required to be given to any <sup>cidents.</sup> authority by or on behalf of the employer, of any accident occurring on his premises which result in death, the person required to give the notice shall, within seven days of the death, send a report to the commissioner giving the circumstances attending the death :

Provided that where the Government has so prescribed the person required to give the notice may instead of sending such report to the commissioner send it to the authority to whom he is required to give the notice.

(2) The Government may, by notification in the Government Gazette, extend the provisions of sub-section (1) to any class or premises other than those coming within the scope of that sub-section and may, by such notification, specify the persons who shall send the report to the commissioner.

**13.** (1) Where a workman has given notice of an accident, <sup>Medical examination.</sup> he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.



(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leave without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman whose right to compensation has been suspended under sub-section (2) or sub-section (3) dies without having submitted himself for medical examination as required by either of those sub-sections, the commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed and compensation if any shall be payable accordingly.

**14.** (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that

Contracting.



workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes as the case may be, to execute the work or which are otherwise under his control or management.

**15.** Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

**16.** (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon



any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer so however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia) the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurer of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under order 21-A of the Jammu and Kashmir Code of Civil Procedure or under section 230 of the Companies Act, 1977, or in the distribution of the property of an insolvent or in the distribution of the assets of the company being wound up to be paid in priority to all other debts, the amounts due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof, shall for the purposes of this section, be taken to be the amount of the lump-sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound



up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

**17.** The Government may by notification in the Government Gazette, direct that every person employing workmen or that any specified class of such persons shall send at such time and in such form and to such authority, as may be specified in the notification a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the Government may direct.

**18.** Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

**19.** Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory a valid certificate granted in respect of such person under section 10 or section 44 of the Jammu and Kashmir Factories Act, 1999 before the occurrence of the injury shall be conclusive proof of the age of such person.

**20.** (1) Whoever—  
 (a) fails to maintain a notice book which he is required to maintain under sub-section (3) of section 10, or  
 (b) fails to send to the commissioner a statement which he is required to send under sub-section (1) of section 11, or  
 (c) fails to send a report which he is required to send under section 12, or  
 (d) fails to make a return which he is required to make under section 17 shall be punished with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a commissioner, and no Court shall take cognisance of any offence under this section unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.



## CHAPTER III.

## COMMISSIONERS.

**21.** (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a commissioner or to enforce any liability incurred under this Act.

**22.** (1) The Government may, by notification in the Government Gazette, appoint any person to be a commissioner for workmen's compensation for such local area as may be specified in the notification.

(2) Where more than one commissioner has been appointed for any local area the Government may, by general or special order, regulate the distribution of business between them.

(3) Any commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, chose one or more persons possessing special knowledge of any matter relevant to the matter under enquiry to assist him in holding the enquiry.

(4) Every commissioner shall be deemed to be a public servant within the meaning of the Ranbir Penal Code.

**23.** Where any matter is under this Act to be done by or before a commissioner the same shall, subject to the provisions of this Act, and to any rules made hereunder, be done by or before a commissioner for the local area in which the accident took place which resulted in the injury.

(2) If a commissioner is satisfied that any matter arising out of the proceedings, pending before him can be more conveniently dealt with by any other commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other



commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings :

Provided that the commissioner shall not, where any party to the proceeding has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard :

Provided further, that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump-sum shall be transferred for disposal under this sub-section to a commissioner save with the previous sanction of the Government unless all the parties to the proceedings agree to the transfer.

(3) The commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and if the matter was transferred for report return his report thereon or, if the matter was transferred for disposal continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a commissioner to whom any matter has been transferred for report under sub-section (2), the commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The Government may transfer any matter from any commissioner appointed by them to any other commissioner appointed by them.

**24.** (1) No application for the settlement of any matter by a commissioner other than an application by a dependent or dependents for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain in addition to any particulars which may be prescribed, the following particulars namely:—

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the



employer and if such notice has not been served or has not been served in due time, the reasons for such omission ;

(c) the names and the addresses of the parties ; and

(d) except in the case of an application by dependents for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the commissioner.

**25.** (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the commissioner such sum is insufficient, the commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the commissioner, the commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

**26.** The commissioner shall have all the powers of a civil Court under the Code of Civil Procedure, 1977 for the purpose of taking evidence on oath which such commissioner is hereby empowered to impose and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the commissioner shall be deemed to be a civil Court for all the purposes of section 195 and chapter XXXV of the Code of Criminal Procedure, 1989.

**27.** Any appearance, application or act required to be made or done by any person before or to a commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company, or with the permission of the commissioner by any other persons so authorised.

**28.** The commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed



by the commissioner with his own hand and shall form part of the record:

Provided that, if the commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record: Provided further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

**29.** All costs incidental to any proceedings before a commissioner shall, subject to rules made under this Act, be in the discretion of the commissioner.

**30.** A commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so shall decide the question in conformity with such decision.

**31.** (1) Where the amount of any lump-sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the commissioner, who shall on being satisfied as to its genuineness record the memorandum in a register in the prescribed manner:

Provided that—

(a) no such memorandum shall be recorded before seven days after communication by the commissioner of notice to the parties concerned;

(b) the commissioner may at any time rectify the register;

(c) where it appears to the commissioner that an agreement as to the payment of a lump-sum whether by way of redemption of a half-monthly payment or otherwise or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything



contained in the Jammu and Kashmir Contract Act, 1977 or in any other law for the time being in force.

**32.** Where a memorandum of any agreement, the registration of which is required by section 31 is not sent to the commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

**33.** (1) An appeal shall lie to the High Court from the following orders of a commissioner, namely :—

Appeal

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ;

(b) an order refusing to allow redemption of a half-monthly payment ;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 14, or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further, that no appeal shall lie in any case in which the parties have agreed to abide by that decision of the commissioner, or in which the order of the commissioner gives effect to an agreement come to by the parties. Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.



(2) The period of limitation for an appeal under this section shall be ninety days.

(3) The provisions of section 5 of the Jammu and Kashmir Limitation Act, 1995 shall be applicable to appeals under this section.

**34.** Where an employer makes an appeal under clause (a) of sub-section (1) of section 33 the commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

Withholding of certain payment pending decision of appeal.

**35.** Any amount payable by any person under this Act whether under an agreement for the payment of compensation or otherwise may be recovered as an arrear of land revenue.

Recovery.

## CHAPTER IV.

### RULES.

**36.** (1) The Government may make rules to carry out the purposes of this Act.

Powers of the Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (1) of section 13;

(c) for prescribing the procedure to be followed by commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a commissioner may be invested for the benefit of dependents of a deceased workman and for the transfer of money so invested from one commissioner to another;



(f) for the representation in proceedings before commissioners of parties who are minors or are unable to make an appearance ;

(g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;

(h) for withholding by commissioners whether in whole or in part of half-monthly payments pending decision on applications for review of the same ;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act ;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a commissioner under this Act ;

(k) for the maintenance by commissioners of registers and records of proceedings before them ;

(l) for prescribing the classes of employers who shall maintain notice books under sub-section 3 of section 10 and the form of such notice books ;

(m) for prescribing the form of statement to be submitted by employers under section II ; and

(n) for prescribing the cases in which the report referred to in section 12 may be sent to an authority other than the commissioner.

**37.** (1) The power to make rules conferred by section 36 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with section 23 of the Jammu and Kashmir General Clauses Act, 1977, as that after which a draft of rules proposed to be made under section 36 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Government Gazette and on such publication shall have effect as if enacted in this Act.

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**Workmen's Compensation.****SCHEDULE I.**

[See sections 2 (1) and (4)]

*List of injuries deemed to result in permanent partial disablement.*

Injury.	Percent- age of loss of earning capacity.
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

**SCHEDULE II.**

[See section 2 (1) (l)]

*List of persons who, subject to the provisions of section 2 (1) (l), are included in the definition of workmen.*

The following persons are workmen within the meaning of section 2 (1) (l) and subject to the provisions of that section, that is to say, any person who is—

1. (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity, or



(ii) employed otherwise than in a clerical capacity in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (g) of section 2 of the Jammu and Kashmir Factories Act, 1999, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty, or more persons have been so employed; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed; or

(v) employed in any mine, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground;

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause; or

(vi) employed in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twenty feet or more in height from lowest to its highest point; or

(c) any road, bridge, or tunnel; or

(vii) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same; or

(viii) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer; or



- (ix) employed in the service of any fire brigade ; or
- (x) employed upon a railway either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ; or
- (xi) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas ; or
- (xii) employed in any occupation involving blasting operations ; or
- (xiii) employed, in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet ; or
- (xiv) employed in the operation of any ferry boat capable of carrying more than ten persons ; or
- (xv) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed ; or
- (xvi) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ; or
- (xvii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or
- (xviii) employed in the training or keeping of wild animals ; or
- (xix) employed in lopping, felling or logging of trees, or the transport of timber by inland waters or the control or extinguishing of forest fires ; or
- (xx) employed in operations for the catching or hunting of wild animals ; or
- (xxi) employed in the handling or transport of goods in, or within the precincts of—
  - (a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed ; or
  - (b) any market in which on any one day of the preceding twelve months one hundred or more persons have been so employed ;
- (xxii) employed on the collection of fruits from trees exceeding twenty-five feet in height.



EXPLANATION.—In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

### SCHEDULE III.

(See section 3)

#### *List of occupational diseases.*

##### PART A.

Anthrax	Any employment—
	(a) involving the handling of wool, hair, bristles, or animal carcasses, or the parts of such carcasses including hides, hoofs, and horns ; or
	(b) in connection with animals infected with Anthrax ; or
	(c) involving the loading, unloading or transport of any merchandise.
Compressed air illness or its sequele.	Any process carried on in compressed air.
Poisoning by lead tetra-ethyl	... Any process involving the use of lead tetra-ethyl.
Poisoning by nitrous fumes	... Any process involving exposure to nitrous fumes.

##### PART B.

Lead poisoning or its sequele, excluding poisoning by lead tetra-ethyl.	Any process involving the use of lead or any of its preparations or compounds except lead tetra-ethyl.
Phosphorous poisoning or its sequele.	Any process involving the use of phosphorous or its preparations or compounds.
Mercury poisoning or its sequele.	Any process involving the use of mercury or its preparations or compound.
Poisoning by benzene and its homologues, or the sequele of such poisoning.	Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.
Chrome ulceration or its sequele	... Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.



Arsenical poisoning or its sequelæ ...	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological manifestations due to— (a) radium and other radioactive substances, (b) X-rays.	Any process involving exposure to the action of radium, radio active substances or X-rays.
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen mineral oil, paraffin, or the compounds, productse or residues of these substances.



• **Workmens' Compensation.**

**SCHEDULE IV.**

(See section 4)

*Compensation payable in certain cases.*

*Amount of compensation for*

<i>Amount of compensation for</i>				Half-monthly payment as compensation	
Monthly wages of the workman injured.	Death of adult.	Permanent total disable- ment of adult.	for temporary disablement of adult.		
I	2	3	4		
More than.	But not more than.			Rs. as.	
Rs.	Rs.	Rs.	Rs.	Half his month- ly wages.	
5	10	250	350		
10	15	275	385	5	0
15	18	300	420	6	0
18	21	315	441	7	0
21	24	360	504	8	0
24	27	405	567	8	8
27	30	450	630	9	0
30	35	525	735	9	8
35	40	600	840	10	0
40	45	675	945	11	4
45	50	750	1,050	12	8
50	60	900	1,260	15	0
60	70	1,050	2,470	17	8
70	80	1,200	1,680	20	0
80	100	1,500	2,100	25	0
100	200	1,750	2,450	30	0
200	.....	2,000	2,800	30	0



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

Act No. VIII of 2000.

## CONTENTS.

*Preamble.*

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<i>Notification and Regulation of Areas.</i>	<i>Bar of Compensation for acts done under Sections 8, 9 and 10.</i>
3 Notification of Areas.	11. Bar of action.
4.. Power to regulate, restrict or prohibit by general or special order within notified area certain matters.	<i>Power to enter upon and delimit Notified Area and Beds.</i>
5. Power in certain case to regulate, restrict or prohibit special order within notified areas, certain further matters.	12. Power to enter upon, survey and demarcate local areas notified under section 3 or 8.
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<i>Control over the Beds of Khuds and Nallahs.</i>	<i>Method of awarding compensation and effect of such award</i>
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9. Effect of notification to suspend or extinguish private rights in the area notified under section 8.	15. Record of right in respect of notified areas.
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	17. Appeal, review and revision.
	18. Penalty for offences.
	19. Bar of suits.
	20. Power to make rules.



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

## Act No. VIII of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 2nd June 1943/20th Jeth 2000 and published in the Government Gazette dated 1st Bhadon 2000/17th August 1943.]*

### **An Act to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State.**

WHEREAS it is expedient to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State situate within or adjacent to the mountain ranges or affected or liable to be affected by the debolsement of forests within those ranges, or by the action of streams and torrents, such as are commonly called *Khuds* and *Nallahs* flowing through or from them ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Land Preservation Act, 2000.

Short title and extent.

(2) It shall extend to the whole of the State.

2. In this Act, unless a different intention appears from the subject or context,—

Definitions.

(a) "Collector" includes any revenue officer, not lower in rank than an Assistant Collector of the first class specially appointed by the Government to perform the functions of a Collector under this Act ;

(b) "*Khud*" or "*Nallah*" means a stream or torrent flowing through or from mountain range ;

(c) "land" means land within any local area preserved and protected or otherwise dealt with in manner provided in this Act, and includes benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth ;

(d) "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act ; and

(e) the words "tree", "timber", "forest produce" and "cattle" respectively, shall have the meanings severally assigned to them in the Jammu and Kashmir Forest Act, 1987.



## NOTIFICATION AND REGULATION OF AREAS.

**3.** Whenever it appears to the Government that it is desirable to provide for the better preservation and protection of any local area, situate within or adjacent to any mountain range or affected or liable to be affected by the debodisement of forests in that range or by the action of *Khuds* and *Nallahs* they may, by notification in the Government Gazette, make a direction accordingly.

**4.** In respect of areas notified under section 3 generally or the whole or any part of any such area, the Government may by general or special order, temporarily regulate, restrict or prohibit—

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone, or the burning of lime or the making of bricks at places, where such stone or lime or bricks had not ordinarily been so quarried or burnt or made prior to the publication of notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce other than grass save for *bonafide* domestic or agricultural purposes ;

(d) the setting on fire of trees, timber or forest produce ;

(e) the admission, herding,, pasturing or retention of sheep and goats ;

(f) the examination of forest produce passing out of any such area ; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area to take any trees, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons.

**5.** In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the Government may by special order temporarily regulate, restrict or prohibit—



(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone or the burning of lime or the making of bricks at places where such stone or lime or bricks had ordinarily been so quarried or burnt or made prior to the publication of the notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce for any purposes ; and

(d) the admission, herding, pasturing or retention of cattle generally, other than sheep and goats, or of any class or description of such cattle.

EXPLANATION.—For the purposes of clause (b) of section 4 and clause (b) of this section, the word “making” includes “burning”.

**6.** Every order under section 4 or 5 shall be published in the Government Gazette and shall set forth that the Government are satisfied, after due inquiry and consideration, of objections as may have been preferred that the regulations, restrictions or prohibitions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

**7.** (1) When in respect of any local area a notification has been published under section 3 ; and .

Proclamation of regulations, restrictions and prohibitions and admission of claims of compensation for rights which are restricted or extinguished.

(a) upon such publication any general order made under section 4 becomes applicable to such area ; or

(b) any special order under section 4 or section 5, is made in respect of such area, the Collector shall cause public notice of the provisions of such general or special order to be given and, if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof fixing a period of not less



than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1) shall be rejected :

Provided that if the claimant satisfies the Collector that he had sufficient cause for not preferring the claim within time, the Collector may admit any such claim as if it had been made within such period.

#### CONTROL OVER THE BEDS OF KHUDS AND NALLAHS.

8. (1) Whenever after due enquiry and consideration of such objections as may be preferred it appears to the Government that it is desirable that measures should be taken in the bed of any *Khud* or *Nallah* for the purpose of—

Action when Government considers it desirable to take measures to regulate the beds of Khuds and Nallahs. Vesting of such beds in the Government.

(a) regulating the flow of water within and preventing the widening or extension of such bed, or of

(b) reclaiming or protecting any land situate within the limits of such bed,

they may either proceed at once in the manner provided in sub-section (2), or they may, in the first instance, issue a notification specifying the nature and extent of the measures which in their opinion are necessary, and the locality in, and the time within, which such measures are to be taken, requiring all owners and occupiers of land situate in such locality to carry out the measures specified in such notification.

(2) If the whole or any part of the bed of any *Khud* or *Nallah* be unclaimed, or, if in the opinion of the Government the measures deemed necessary under sub-section (1) are of such a character in regard to extent and cost that the interference of the Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any *Khud* or *Nallah* failing to comply with the requirements of any notification issued under sub-section (1), the Government may by notification declare that the whole or any part of the area comprised within



the limits of the bed of any *Khud* or *Nallah* shall vest in the Government for such period and subject to such conditions, if any, as may be specified in the notification, and may, from time to time, by like notification extend the period during which any such area shall remain vested in the Government :

Provided that no such declaration shall be made in respect of or shall affect any land included within the limits of the bed of any such *Khud* or *Nallah* which, at the date of the notification making such declaration, is cultivated and yields any produce of substantial value.

(3) When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures the decision of those paying the larger amount of land revenue shall be held to be binding on all.

9. Upon the making of any declaration under sub-section (2) of section 8 all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing

Effect of notification to suspend or extinguish private rights in the area notified under section 8.

such declaration at the time of the publication therefor shall be suspended for the period specified in the declaration and for such further period, if any, to which the notification may be extended :

Provided that, as far as circumstances admit, such rights of way and water shall be reserved in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons, if any, who, at the time of the making of such declaration, possessed any such rights over such area.

10. (1) The Collector shall, for the purpose of every notification issued under sub-section (2) of section 8, fix the limits of the area comprised within the bed of the *Khud* or *Nallah* to which such notification is to apply.

Power of the Collector to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the Government.

(2) Upon the publication of the notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Collector to—

(a) take possession of the area specified in such declaration ;

(b) eject all persons therefrom ; and

(c) deal with such area while it remains vested in the Government as if it were the absolute property of Government.



## BAR OF COMPENSATION FOR ACTS DONE UNDER SECTIONS 8, 9 AND 10.

**11.** No person shall be entitled to any compensation for anything at any time done in good faith in exercise of any power conferred by section 8, section 9 or section 10.

## POWER TO ENTER UPON AND DELIMIT NOTIFIED AREA AND BEDS.

**12.** It shall be lawful for the Collector and his subordinate officers, servants, caretakers and workmen from time time, as occasion may require—

Power to enter upon, survey and demarcate local areas notified under section 3 or 8.

(a) to enter upon and survey any land comprised within any local area in regard to which any notification has been issued under section 3 or section 8 ;

(b) to erect bench-marks on and to delimit and demarcate the boundaries of any such local area ; and

(c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to carry into effect all or any of the provisions of this Act ;

Provided that reasonable compensation to be assessed and determined in the manner provided in this Act shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, shall be payable in respect of any thing done.

## INQUIRY INTO CLAIMS AND AWARD OF COMPENSATION.

**13.** (1) The Collector shall—

Inquiries into claims and award thereupon.

(a) fix a date for inquiry into all claims made under sections 7 and 8 and may, in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him ;

(b) record in writing all statements ;

(c) inquire into all claims duly preferred ;

(d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or the persons making such claim, the extent, if any, to which, and the persons or person in whose favour, the right claimed is established, the extent to which it is



restricted or prohibited and the nature and amount of compensation if any awarded.

(2) For the purposes of every such enquiry the Collector may exercise all or any of the powers of a Civil Court in the trial of suits under the Code of Civil Procedure, 1977.

(3) The Collector shall announce his award to such persons interested or their representatives as are present and shall record the acceptance of those who accept it. To such as are not present the Collector shall cause immediate notice of his award to be given.

**14.** (1) In determining the amount of compensation and the taking over of possession the Collector shall be guided, so far as may be, by the provisions of sections 23, 24, 16 and 17 of the Jammu and Kashmir Land Acquisition Act, 1990 and as to matters which cannot be dealt with under those provisions by what is just and reasonable in the circumstances of each case.

(2) The Collector may with the sanction of the Government and the consent of the person entitled, instead of money, award compensation in land or by reduction in revenue or in any other form.

(3) In any case in which the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

#### PROCEDURE, RECORDS AND APPEALS.

**15.** (1) For every area, notified under section 3, or section 8, the Collector shall prepare a record setting forth the nature, description, and extent of all rights mentioned in section 4 and section 5—

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8 ;

(b) regulated, restricted or prohibited by any order under section 4 or section 5.

(2) When any award is made under section 14, its effect upon such rights shall also be recorded therein.

**16.** (1) Upon the publication of a notification issued under any of the provisions of this Act, the Collector shall cause a public notice or the substance thereof to be given at convenient places to which such notification relates.

Method of awarding compensation and effect of such award.

Record of right in respect of notified areas.

Mode of proclaiming notification and of serving notices orders and processes issued under the Act.



(2) The procedure prescribed in section 15-B, 15-C and 15-D of the Land Revenue Act, 1996, shall be followed, as far as may be, in proceedings under this Act.

**17.** Every order passed and every award made by the Collector under this Act, shall for the purposes of appeal, review and revision, respectively be deemed to be an order of the Collector within the meaning of section 11, 12, 13 and 14 of the Jammu and Kashmir Land Revenue Act, 1996 :

Provided that nothing in this Act shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded, as to the apportionment of distribution thereof amongst such persons or any of them.

**18.** Any person who within the limits of any local area notified under section 3 commits any breach of any regulation made or restrictions or prohibitions imposed under section 4 or section 5 shall be punished with fine which may extend to one hundred rupees or in default with imprisonment for a period not exceeding one month.

**19.** No suit shall lie against the Government for anything done under this Act and no suit shall lie against any public servant for any thing done or purporting to have been done by him, in good faith, or against any private individual for any thing done or purporting to have been done by him in good faith under the orders of any such public servant, under this Act.

**20.** (1) The Government may make rules consistent with this Act—

(a) regulating the procedure to be observed in any inquiry or proceeding under this Act ; and

(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Government Gazette and on the expiry of thirty days from the date of such publication shall have the force of law.



# THE LADAKH BUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

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# THE LADAKH DUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 14th Magh 2000/27th January 1944.]*

## An Act to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh.

Whereas it is expedient to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh; It is hereby enacted as follows:—

Preamble.

1. (i) This Act may be called the Ladakh Budhists Succession to Property Act, 2000.

Short title and extent.

(ii) It shall extend to the whole of Jammu and Kashmir State, but shall apply to the Budhists who have their domicile in Ladakh.

2. In this Act, unless there is anything repugnant in the subject or context:—

Definitions.

(a) "Buddhist" means a person who professes the Buddhist faith or religion;

(b) "Ladakh" means the District of Ladakh.



3. On the death of a Buddhist his property where he leaves more than one son, shall, notwithstanding any law or custom to the contrary but subject to any valid disposition thereof which he may have made during his lifetime, be inherited by all his sons in equal shares :

Right of all sons to succeed in equal shares. Provided that sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall inherit *per stripes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him, and likewise the grandsons of a pre-deceased son shall take the share which their father would have taken.

4. The provisions of this Act shall not affect any right of succession accrued or any title to property acquired before the commencement of this Act.

Saving.

## THE TRADE MARKS ACT, 2000.

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